

**IN THE MATTER OF:**  
**COLUMBIA COUNTRY CLUB**  
Petitioner

Jody S. Kline, Esquire  
Attorney for the Petitioner

Donna Kirk  
Community Participant

Board of Appeals Case Nos. CBA-286-B  
(OZAH Referral No. 06-18)

## HEARING EXAMINER'S REPORT AND RECOMMENDATION

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## **I. STATEMENT OF THE CASE**

### **A. Procedural Background**

On November 17, 2005, Petitioner Columbia Country Club filed an application with the Board of Appeals (Exhibit 1) seeking to modify an existing Special Exception (CBA-286-A, and earlier petitions) to permit a variety of improvements, including changes to the physical plant, parking and staff. Petitioner also seeks a waiver of the accessory structure, rear-yard location requirement specified in Zoning Ordinance §59-C-1.326(a) and reduction of the 100 foot outdoor activity setback requirement specified in Zoning Ordinance §59-G-2.24(d). Both the waiver and the setback reduction are permitted Board actions under this special exception, Zoning Ordinance §59-G-2.24, Golf Course and Country Club. The Columbia Country Club contains 146.38 acres and is located at 7900 Connecticut Avenue, Chevy Chase, in the R-90 Zone.

On December 28, 2005, the Board of Appeals issued a notice scheduling the matter for a hearing before the Hearing Examiner on March 27, 2006. At the request of the Petitioner, the hearing was postponed twice to allow amendments to the petition and review by the State Highway Administration, Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), and the Montgomery County Planning Board. Exhibits 13 and 15. On July 14, 2006, the Office of Zoning and Administrative Hearings issued a notice for a public hearing to be held on November 3, 2006 (Exhibit 18). Notices of motions to amend the petition prior to the public hearing were issued on October 18 and October 26, 2006.

Though some concerns were raised by neighbors, there was no direct community opposition to the subject modification petition. By letter dated October 11, 2006, the Hamlet Citizens Association, comprised of 245 nearby residences, expressed its support for the modification petition (Exhibit 22). Technical Staff also contacted the East Bethesda Citizens Association and the Town of Chevy Chase,

seeking their views. Neither objected to the modification petition. Exhibit. 45. p. 18. Two members of the Columbia Country Club called Technical Staff to express their concerns about the amount of parking to be provided, and Technical Staff did review this issue and found the proposed parking to be adequate. Exhibit 45, pp. 22-23. In addition, the neighbors who live directly across East-West Highway from an entrance to the Country Club (the Kirks) communicated some negative comments to Technical Staff about existing structures (including a wall erected by the State Highway Administration, the current tennis bubble and the existing parking facility), and asked Technical Staff to review the scale of the proposed changes. Exhibit 45, pp. 17-18. On October 24, 2006, this office received a letter from April D. Schwartz, a neighbor of the Country Club, asking that the Hearing Examiner not approve “night golf,” as the lights would be disturbing to the neighborhood. No night golf is planned. Tr. 7, 70-73.

Technical Staff issued its report on October 18, 2006 (Exhibits 25 and 45), recommending approval of the special exception, the waiver request and the setback reduction sought by Petitioner, with conditions.<sup>1</sup> The Montgomery County Planning Board met on October 26, 2006, and voted unanimously to recommend approval of all three items as well. The Planning Board also recommended the same conditions as had the Technical Staff, with some minor modifications, as reflected in the Planning Board’s letter to the Hearing Examiner, dated November 2, 2006 (Exhibit 29).<sup>2</sup>

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<sup>1</sup> A corrected version of the Technical Staff report was filed as Exhibit 45, incorporating some commentary made at the Planning Board meeting. The Technical Staff report is frequently quoted and paraphrased herein.

<sup>2</sup> At the hearing, Petitioner’s counsel, Jody Kline, alleged that the Planning Board’s November 2, 2006 letter, prepared by Technical Staff and signed by the Planning Board’s Chairman, overstated what actually occurred at the Planning Board meeting of October 26, 2006. Tr. 11-23. In support of this allegation, Mr. Kline produced a transcript of a portion of the Planning Board meeting, which had been prepared in Mr. Kline’s office (Exhibit 31).

Of greatest concern to Mr. Kline was the additional condition that the Planning Board imposed in its letter, which required Petitioner to meet with and come to agreement with a neighbor, Duncan Kirk, about landscaping Petitioner would plant, at its own expense, on Mr. Kirk’s property to screen the effects of the proposed modifications. Mr. Kline asserts that the Planning Board never discussed or voted to recommend imposition of such a condition. Martin Klauber,

A public hearing was convened as scheduled on November 3, 2006, and testimony was presented by Petitioner in support of the petition. There was no opposition at the hearing, although a confronting neighbor, Donna Kirk, did testify to express some concerns. Tr. 128-129. Martin Klauber, People's Counsel for Montgomery County, participated in the hearing and expressed his support for the petition. Tr. 134-135. At the conclusion of the hearing, the record was held open indefinitely to allow Petitioner time to submit modified plans for review by Technical Staff. On November 22, 2006, Petitioner submitted the modified plans with a motion to amend the petition (Exhibit 46), and on November 24, 2006, a notice was issued to all interested parties inviting comment (Exhibit 47). None was received.

Technical Staff approved the revised plans on December 7, 2006 (Exhibit 49) and the revised lighting on January 4, 2007 (Exhibits 51 and 51(a)). The final petition amendments were granted, and the record closed, effective January 5, 2007, by order of the Hearing Examiner. As will appear more fully below, there are no issues in this case which would warrant denial of the modification petition.

### **B. The Scope of the Hearing**

Zoning Code §59-G-1.3(c)(4) provides that the public hearing on modification applications must be limited to discussion of those aspects of the special exception use that are directly related to the proposed modifications, and if the total floor area will be expanded by more than 25% or 7,500 square feet, the Board may review "the underlying special exception," but only to a limited extent, as

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the People's Counsel, argued that such a condition would not be within the ambit of the Board of Appeal's powers, in any event. Tr. 15.

Although Mr. Kline's allegation is disturbing, the issue was mooted by the fact that Petitioner did actually reach an agreement with Mr. Kirk to provide and plant the screening landscaping on Mr. Kirk's property. *See* Exhibit 32 and the testimony of Mrs. Kirk, Tr. 128-129. Therefore, as suggested by Mr. Kline, there is no need to adopt the referenced additional condition in this report or the Board's resolution. The Hearing Examiner does not necessarily agree with the position of the People's Counsel that the Board of Appeals has no power to impose an off-site condition such as this one, since the Board's power to impose conditions to protect the neighbors is quite broad. *See* Zoning Ordinance §59-G-1.22(a), which provides: "*The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.*" The Hearing Examiner need not decide this issue in the subject case, but will recommend a condition that requires Petitioner to carry out the agreement it has reached with the Kirks, as set forth in Exhibit 32.

specified in Zoning Ordinance §59-G-1.3(c)(4)(A). That section provides:

(A) After the close of the record of the proceedings, the Board must make a determination on the issues presented. The Board may reaffirm, amend, add to, delete or modify the existing terms and/or conditions of the special exception. The Board may require the underlying special exception to be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if (1) the proposed modification expands the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less, and (2) the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. [Emphasis added.]

In the subject case, the plan is to expand the floor area from 77,046 square feet to 103,279 square feet, a gain of 26,233 square feet, which is clearly above the 7,500 square foot threshold. Therefore, the Board may require that the underlying special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if it finds that the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

As will appear more fully below, the Hearing Examiner finds that the proposed modifications would not change the nature or character of the special exception, nor are the proposed changes so extensive as to create substantial adverse effects on the surrounding neighborhood.

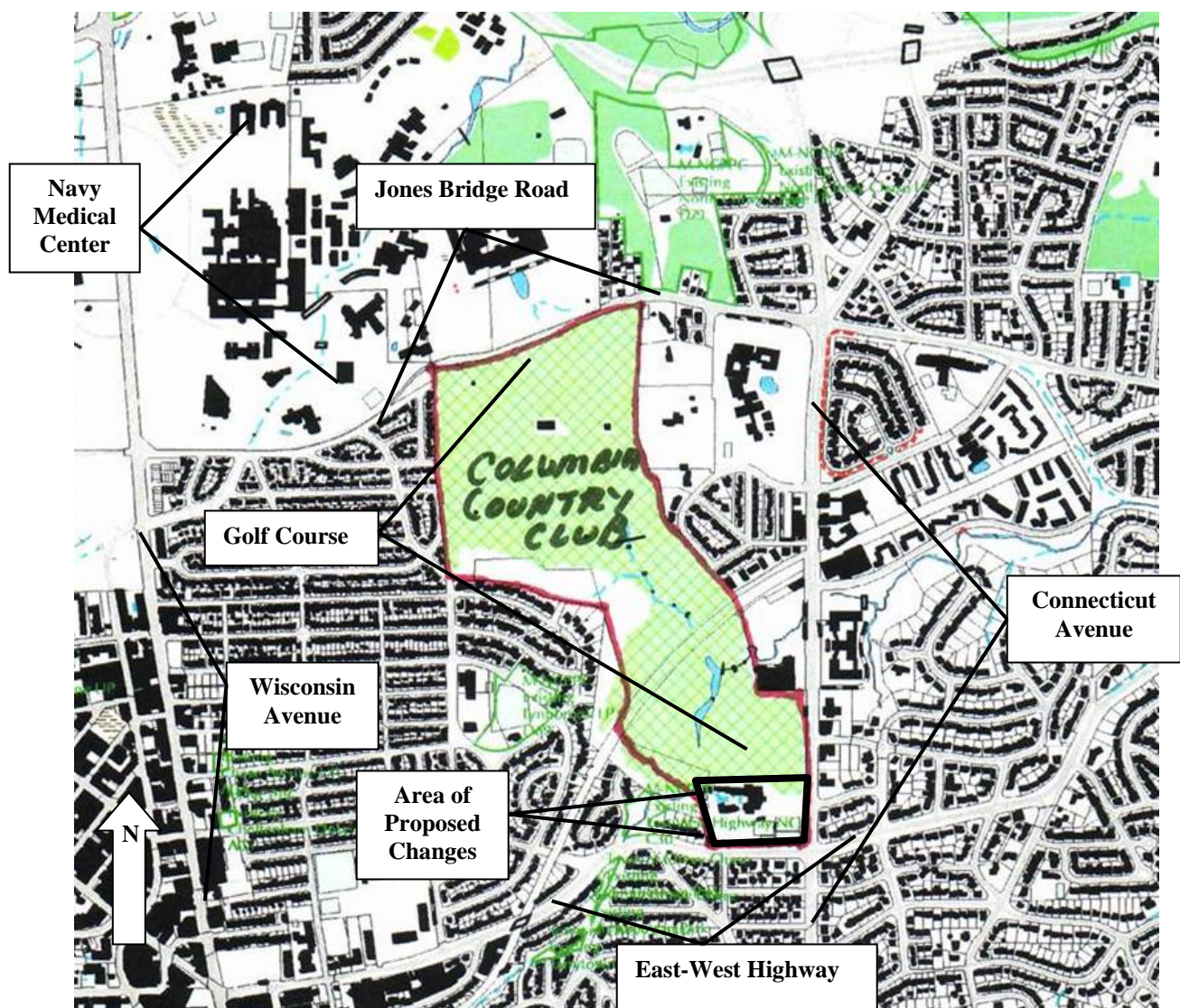
## **II. FACTUAL BACKGROUND**

### **A. The Subject Property and Current Use**

Columbia Country Club has operated a golf and country club at 7900 Connecticut Avenue in Chevy Chase since 1911. In 1955, Petitioner was granted Special Exception BA-286 to allow its continued operation, and since that time has been allowed the following modifications: BA-472, BA-736, BA-2550, BA-2888, BA-3002, CBA-286 and CBA-286-A. The subject property is described as Parcels 303, 908, 703, 913, 502, 070 and 071, and it contains 146.38 acres in the R-90 Zone.

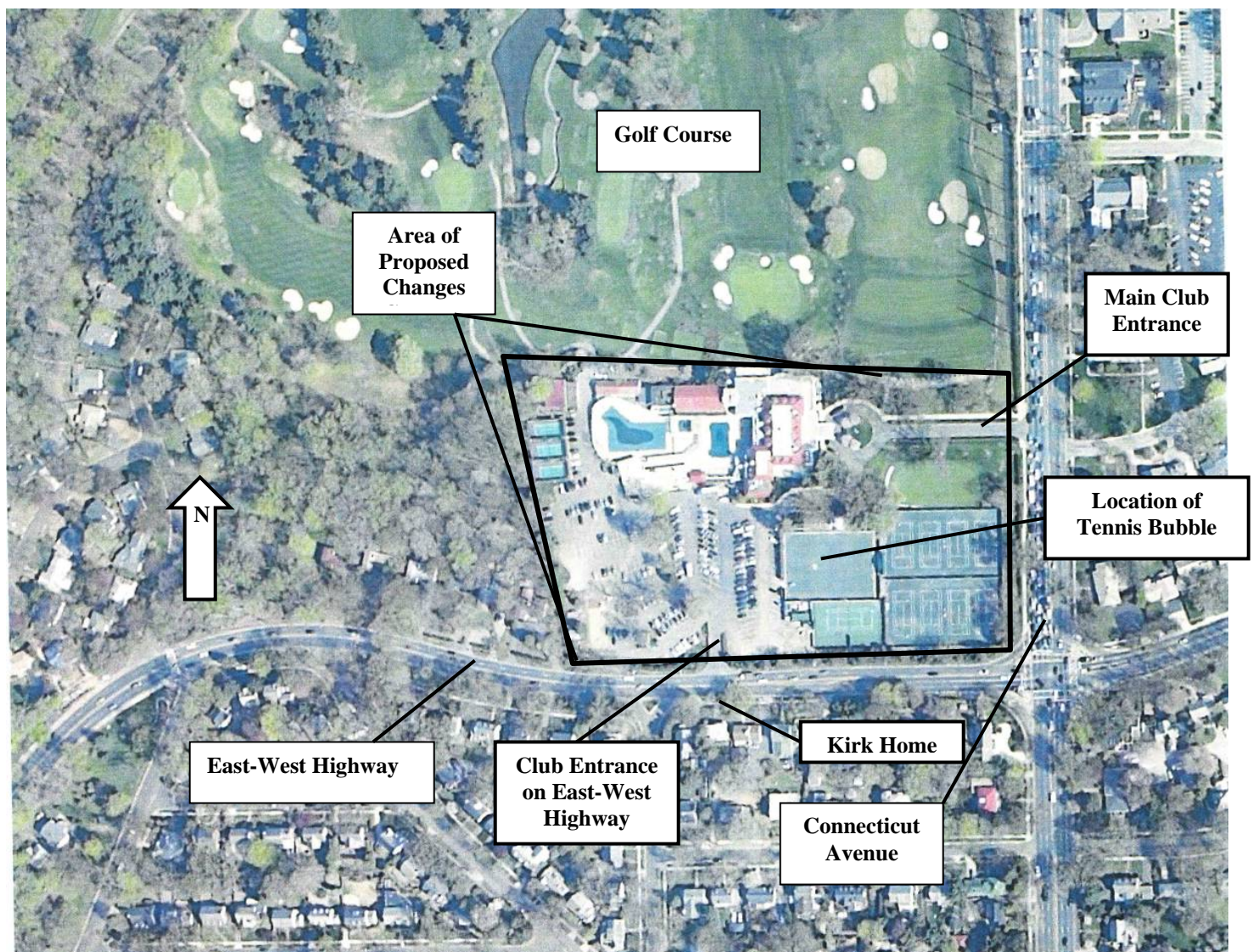
The Club has frontage on East-West Highway (MD 410), to the south, Connecticut Avenue (MD 185), to the east, and Jones Bridge Road, to the north. The main entrance to Columbia Country Club is located on the west side of Connecticut Avenue, approximately 450 feet north of its intersection with East-West Highway. Another entrance to the club is located on the north side of East-West Highway, about 600 feet west of Connecticut Avenue. East-West Highway and Connecticut Avenue are classified as major highways with minimum 120-foot rights-of-way. Jones Bridge Road is classified as an arterial roadway with a minimum 80-foot right-of-way.

The club and its immediate surroundings are shown on the following portion of the “planimetric” map attached to the Technical Staff report:



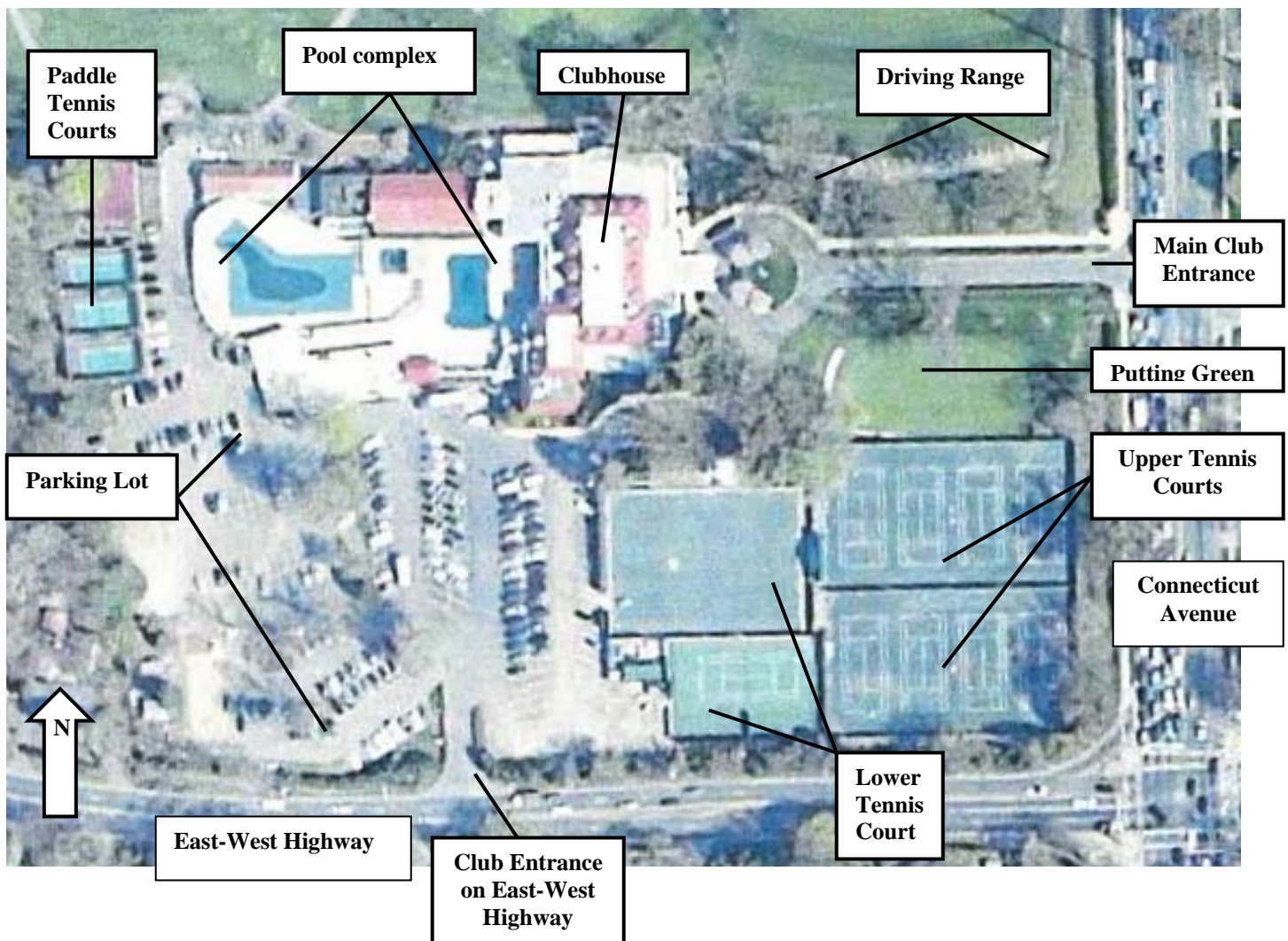


As can be seen, the property is irregularly shaped. According to Technical Staff, the land has a varying topography and slope. Most of the property is occupied by the 18 hole golf course, and all the proposed changes are confined to an area south of the golf course, in the southernmost portion of the property, as marked on the above planimetric map. The following aerial photograph from the Technical Staff report shows the southern portion of the club, including part of the golf course, and the adjacent Connecticut Avenue and East-West Highway (The photo does not show the tennis bubble, which is erected for about 5 months a year; however, its location is noted on the photo):



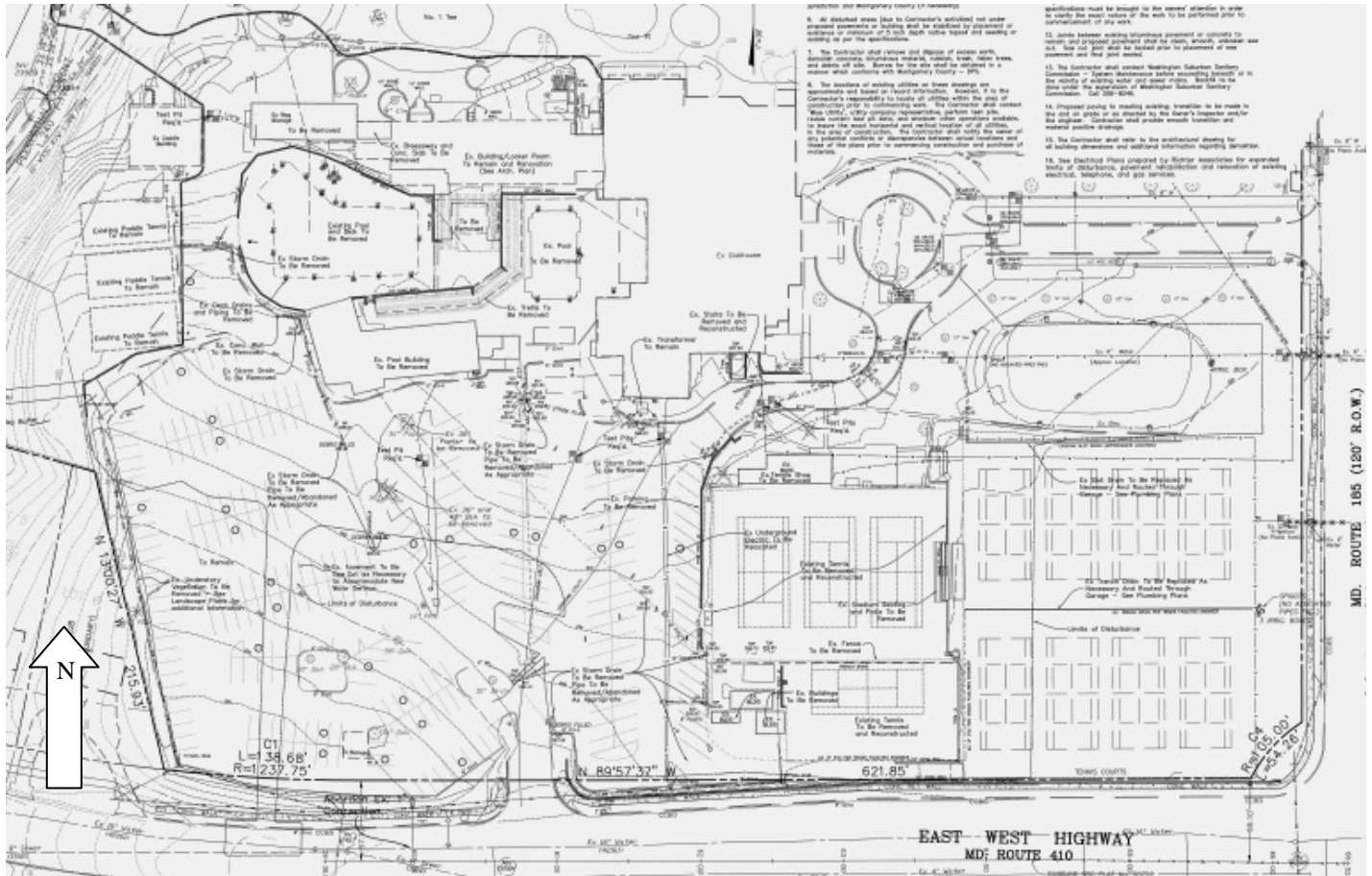


Existing facilities on the southernmost portion of the site (the area of proposed changes) include: the two-story main clubhouse; a rear extension of the clubhouse on the north side; a separate one-story pool building on the south side; an outdoor pool complex with three pools; nine outdoor tennis courts and three tennis courts covered by a bubble five months each year; three paddle tennis courts; a freestanding building for caddies; the main entrance off of Connecticut with a driveway flanked by large trees; a putting green to the south of the main entrance; a driving range to the north of the main entrance drive; high nets along Connecticut Avenue to catch stray golf balls; four small buildings for storage; an outdoor surface parking lot for approximately 274 cars; and the entrance to the parking lot from East West Highway. A blow-up from the aerial photo of the southernmost portion of the site is shown below:





The same area is shown below on Petitioner's "Existing Conditions Demolition Plan –SX-2" (Exhibit 46(b)):



The State Highway Administration recently made intersection improvements to Connecticut Avenue and East-West Highway, and constructed a concrete retaining wall, faced with brick, within the right-of-way along a portion of the East-West Highway property frontage. The wall is about 10 to 12 feet tall as seen from East-West Highway and about 18 feet high in places as seen from within the club grounds. Unfortunately, there is no landscaping between the wall and the sidewalk to provide buffering.

Technical Staff reports that the "mainstem" and a branch of Coquelin Run are located on the subject site, and hence a portion of the stream valley buffer is on site as well. The property is bisected from southwest to northeast by a reservation for the Bi-County Transitway (Purple Line) on land

owned by Montgomery County, currently in use by the Capital Crescent Trail. There are a variety of easements that cross the property too, as noted in record plat applications 2-06161, 2-06162, 2-06163, and 2-06164.<sup>3</sup>

### **B. The Neighborhood**

The neighborhood was described by Technical Staff as follows (Exhibit 45, p. 8):

Columbia Country Club is a large land use, and hence is within a large neighborhood – which, for the purposes of this report, staff defines as that area bounded to the south by Bradley Boulevard; to the west by the boundary of the Bethesda CBD sectional map amendment area and Wisconsin Avenue; to the north by Cedar Avenue and I-495; and to the east by Jones Mill Road, East – West Highway, and Brookeville Road.

Petitioner contends that Technical Staff's definition of the general neighborhood is too broad because all of the proposed modifications will be limited to the small southern portion of the club, while Technical Staff based its definition upon the large size of the entire club. Tr. 24-25; *See* Planimetric Map on page 6 of this report. The Hearing Examiner agrees with this observation because none of the proposed changes is likely to have any effect, adverse or otherwise, on the neighborhood beyond the immediate vicinity of the club's entrances. This is especially true since the membership will remain unchanged, and neither the hours of operation nor the staffing will change dramatically.<sup>4</sup> If this were an application to permit the country club special exception initially, then the general neighborhood described by Technical Staff would be appropriate, but this is a modification petition,

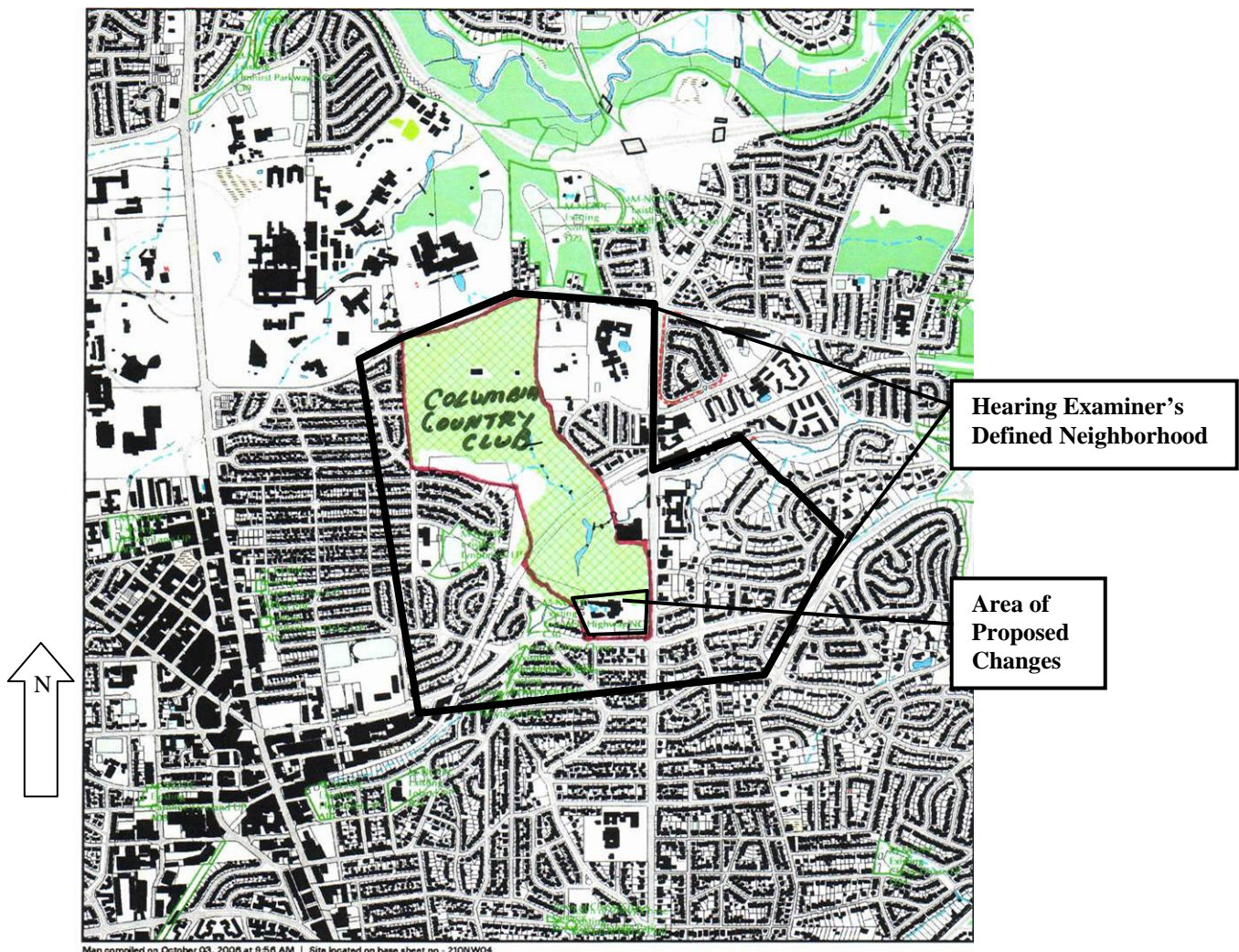
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<sup>3</sup> According to Technical Staff, these record plat applications were recently submitted to M-NCPPC under the "minor subdivision provisions" of Section 50-35A(a)(7) of the Montgomery County Subdivision Ordinance to allow consolidation of the parcels, the creation of recorded (*i.e.* platted) lots or parcels, and the ultimate issuance of building permits for the special exception modifications. As a result of the pending consolidation, dedication of 12,365 square feet will be required along Connecticut Avenue. Further, the applicant has permission from State Highway Administration to allow certain encumbrances to remain within dedicated area, namely a portion of the existing surface parking lot along the East-West Highway frontage of the property, and the entrance sign and driving range screen fencing along the Connecticut Avenue frontage of the property. Exhibit 45, pp. 5-6.

<sup>4</sup> According to Petitioner's Statement of Operations (Exhibit 3(a)), the Club currently operates "almost 24 hours per day," but the Club's primary hours of operation are generally between 8:00 a.m. and 8:00 p.m. Intensity of the use may increase marginally because a new, year round, indoor pool is planned, a fourth paddle tennis court will be added and the facilities, in general, will be upgraded; however, the hours of operation are not being expanded. The staff may increase by about 16 employees (*i.e.*, about 6%), from the current 249 employees to 265 employees. Exhibit 19(a), p.8.

and the effects are unlikely to impact areas where no changes are being made.<sup>5</sup>

The more compact definition of the neighborhood recommended by the Hearing Examiner is bounded on the north by Jones Bridge Road; on the east by Connecticut Avenue (until it reaches Chevy Chase Lake Drive) and then it bulges out as far as East-West Highway to the east to include streets near the main entrance to the Club; on the south by Leland Street; and on the west by Chelton Road and Kentucky Avenue. Technical Staff's proposed definition of the general neighborhood occupies almost the entire vicinity map shown below, while the Hearing Examiner's definition is outlined on it:



<sup>5</sup> This may be a distinction without a difference in this case, because whichever definition of the neighborhood is used, the Hearing Examiner finds that there is no evidence of an adverse effect upon the neighborhood from the proposed modifications.

Land uses in the immediate vicinity of Columbia Country Club were set forth by Technical Staff, as follows (Exhibit 45, p. 8):

The Club adjoins single-family housing on land zoned R-60 to the west. The Club confronts single-family housing on land zoned R-60 across East-West Highway to the south. To the east, across Connecticut Avenue, the Club confronts single-family homes on land zoned R-90 as well as a church, the Women's Club of Chevy Chase, a fire station, a church, and a library. The Club is also diagonally across the intersection of East-West Highway and Connecticut Avenue from single-family housing in the R-90 zone that is located in the southeast quadrant of the intersection. Adjoining the Club to the east are properties developed as high density multi-family housing on land zoned R-10; low-density multi-family housing on land zoned R-30; single-family housing on land zoned R-90; Hayes Manor, which is a designated resource in the Master Plan for Historic Preservation, # 35-10, and which is owned by Howard Hughes Medical Institute, on land zoned R-60; and the North Chevy Chase Local Park. . . . Confronting Columbia Country Club to the north across Jones Bridge Road is the Naval Medical Center, an institutional use on land zoned R-60.

### **C. Proposed Modification**

Petitioner Columbia Country Club has operated a golf and country club at this location for almost a century. The proposed modifications generally encompass changes to club staffing, parking and facilities, confined to the southernmost portion of the property, as shown in the maps on previous pages.

#### **1. Changes to Facilities:**

The existing "Tavern/pool locker house," swimming pools, tennis shop, three small buildings near the tennis courts, golf bag storage room and connection to the golf shop, all will be demolished to make room for a modern year-round Family Activity Building (FAB), an expanded, modernized outdoor pool complex, an enhanced racquet sports complex, an adult casual grill room with a view of



the golf course, a recreational ice skating rink, and on-site parking for an additional 60 to 66 cars.

The details of these improvements are as follows:<sup>6</sup>

- 1) Family Activity Building: ...A new Family Activity Building (FAB) at the west end of the current pool complex ...will be the key element of the proposed Club improvements. The FAB will include a 75 ft., 4-lane indoor pool, pool locker rooms and offices, fitness center, a multi-use exercise studio, a multi-purpose children's activity room, and a child care center where children can be supervised while parents are attending events or participating in activities elsewhere in the Club. [Note: The FAB will also include a duckpin bowling alley. The FAB will be two stories, with a basement.]
- 2) Swimming Pool Complex: Construction of the FAB will create a courtyard enclosing a new outdoor swimming pool complex. New pools will include a 25-meter, 8-lane main pool; a wading pool; and a three-feet deep "training pool" for small children...The new 25-meter pool will be a minimum of four feet deep, allowing for the use of racing starting blocks at both ends for competitive swim team use....The indoor pool included in the FAB will be covered by a two-story enclosure with large operable windows and doors that will allow it to be transformed into an open-air pavilion in the summer that will be directly integrated with the outdoor pool facilities.
- 3) Terrace: The terrace area outside the Terrace Room canopy, where the adult pool is currently located, will provide additional (outdoor) dining and party space during the summer. During the winter, it will accommodate a recreational skating rink. The rink and all of its supporting equipment will be rented from, and installed by, a company specializing in this service. The compressor required to make ice will be located on a truck and may be parked in the loading dock.
- 4) Snack Bar: A new snack bar will be connected to the kitchen storage area. The snack bar will be larger than the current one, and will include an enclosed area to place orders. Ice skaters will also be able to use this area during the winter months for putting on skates.
- 5) Grill Room: A new Grill Room will be constructed by enlarging the east end of the men's locker building and remodeling the interior of the upper level to provide a space similar to the existing Grill Room. This will allow the existing Grill Room to be used for casual adult dining.
- 6) Golf Shop and Men's Locker Room: The existing men's locker rooms will be connected to the FAB by an extension of the golf shop and locker room. New lockers will replace lockers removed in converting the east end of the upper level of the men's locker building. The remainder of the 24" wide lockers in the men's golf locker rooms will be replaced with 16" wide lockers to provide an additional 100 lockers for members on the waiting list.

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<sup>6</sup> This section is quoted from the Technical Staff report, Exhibit 45, pp. 10-13, which in turn was largely quoted from Petitioner's Statement of Operations (Exhibit 3(a)).

- 7) Tennis Facilities: The [upper] tennis courts will be reconstructed ten feet west of the location of the existing courts to allow for the potential widening of Connecticut Avenue, and the all-weather court will be replaced by two practice backboards. The new tennis courts will be reconstructed with “fast dry” artificial clay surfaces identical to the existing courts. The existing tennis bubble will continue to be installed over the lower courts, with the fan and heating unit located in the garage. [Note: {S}taff clarified with the applicant that in the upper tennis areas there will be eight tennis courts, and in the lower area there will be three tennis courts plus the practice backboards. The tennis bubble will be over the three lower courts. A portion of the upper courts and all of the lower courts will be over a newly constructed underground parking garage. As a result, the tennis bubble and tennis courts will be 18 inches higher than they are today. The tennis bubble will be erected . . . {no more than five months a year, from November 1 to March 31}.<sup>7</sup>]

In addition, a new Tennis Shop will be constructed near the location of the existing shop. The main floor will be substantially larger than the existing shop, and will have toilet facilities for members and additional workspace behind the desk. Storage, desk areas for assistant professionals, and shower, toilet and lockers for the staff will be located in the basement.

- 8) Paddle Tennis: One new paddle tennis court will be added adjacent to the existing paddle tennis courts, and a small warming hut will be constructed for the participants’ comfort.
- 9) Bowling Alleys: The bowling alleys will be relocated to the basement level of the Family Activity Building below the pool locker room.
- 10) Golf Bag Storage: The golf bag storage building will be reconstructed in its current location with strengthened foundations to allow for the construction of two floors above that will house the new Fitness Center.
- 11) Parking: The parking demand experienced by the Club during the spring and summer months will be addressed by the construction of a new parking garage under the four lower tennis courts and two of the upper courts. The new garage will accommodate approximately 100 parking spaces. Forty of those spaces will offset the loss of surface parking incurred by construction of the new Family Activity Building. The garage, therefore, will provide for approximately 60 new spaces. [Note: Staff counted parking spaces on the revised special exception detailed site plan and the revised special exception demolition plan received 9/15/2006, and believes correct parking numbers are as follows: 234 proposed surface spaces, 106 proposed garage spaces, 340 proposed total spaces, 274 existing surface parking spaces, for a net gain of 66 parking spaces as a result of the proposed modifications.]<sup>8</sup> The garage will be used primarily for valet parking and employee parking, so a number of the new spaces will be double-parked to achieve

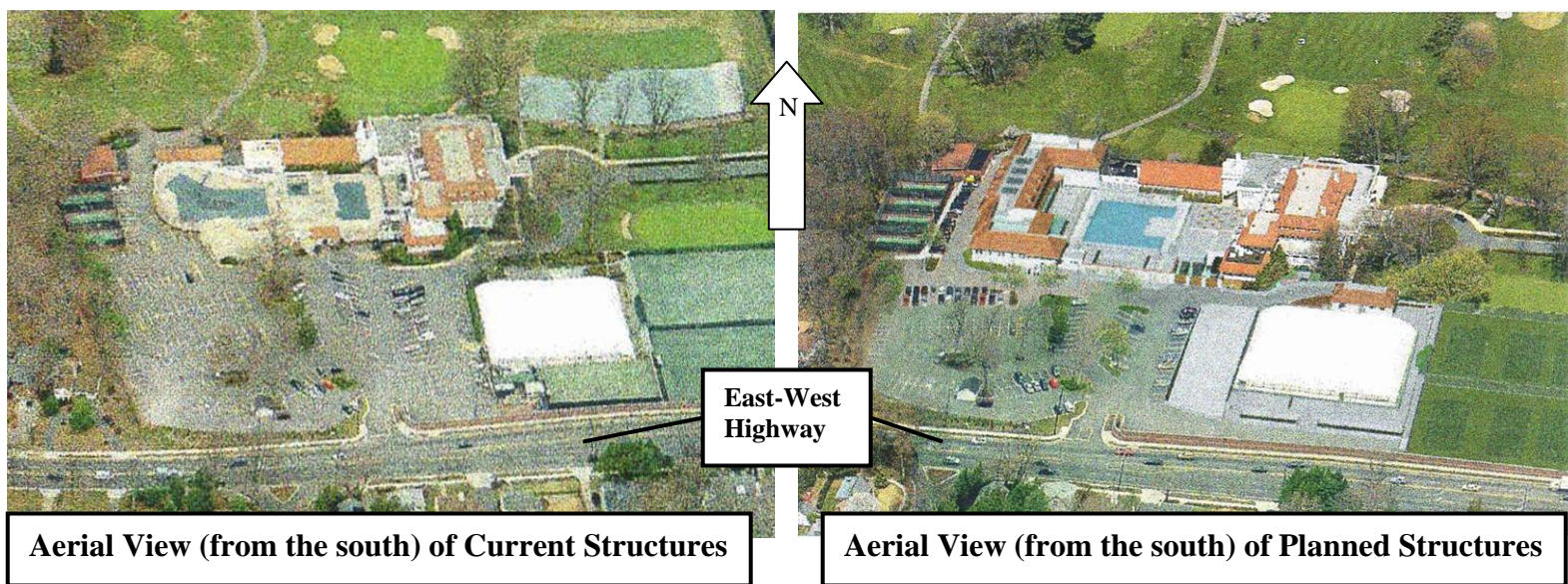
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<sup>7</sup> The Technical Staff report states that the tennis bubble “will be erected fewer than six months a year.” Petitioner’s architect, Mario Boiardi, testified that it is erected at the end of October and dismantled, he thought, in March. Tr. 67. The Board’s Resolution permitting the tennis bubble (CBA-286-A, Corrected Opinion effective August 20, 1996), limits its use to five months a year, from November 1 to March 31. That limitation will continue if this petition is granted.

<sup>8</sup> Notes on the Detailed Site Plan (Exhibit 46(c), Plan Sheet SX-3) indicate the total number of spaces will be 343.

greater efficiency. It will also accommodate ADA-conforming, accessible parking spaces with direct access to the side door of the clubhouse, and the garage structure will have room for storage of items such as outdoor furniture.<sup>9</sup> [Technical Staff noted that the Zoning Ordinance does not prescribe parking standards for golf and country clubs. Staff evaluated Petitioner's plans for parking and found that both the proposed total number of spaces (340) and the parking management plan are sufficient. Exhibit 45, pp. 22-23.]

The following exhibit (30(h)) compares an aerial photo of the southern portion of the site, as it currently appears, with a rendered version showing how it will look after the proposed improvements are implemented (but note that the intended reorientation of the 4<sup>th</sup> paddle tennis court is not shown):

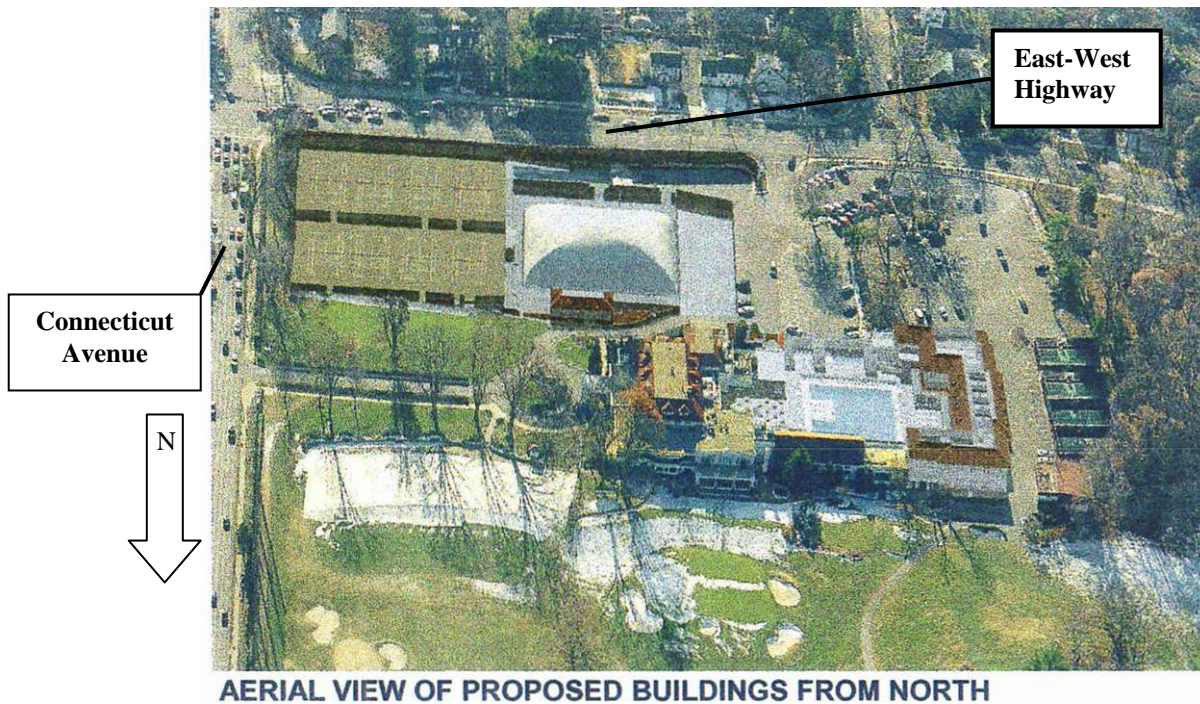


As can be seen from this exhibit, the contemplated changes may vastly improve the Club's facilities, but they do not greatly change the visual impact of the site. These changes certainly would not change the character of the use. It has been, and will continue to be, a golf and country club with

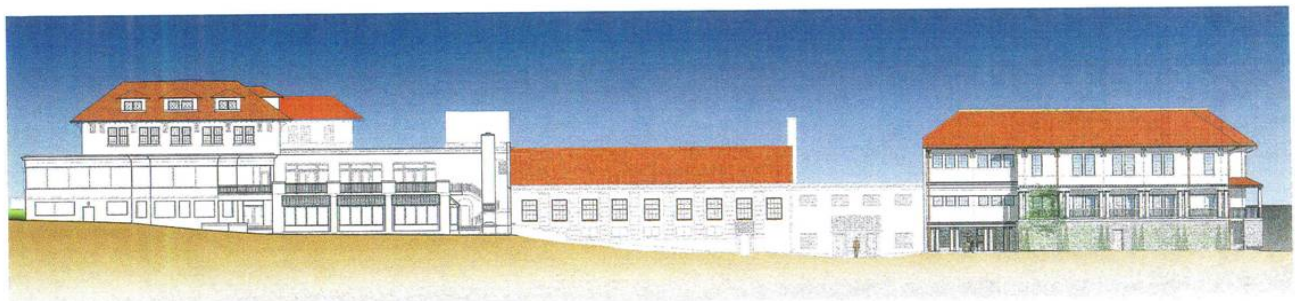
<sup>9</sup> Petitioner states that although the enhancements proposed in this application are not expected to change the general level of activity at the Club, this additional parking will help reduce the number of times that available parking on-site nears capacity due to special activities, or a combination of events at the Club. Petitioner's Supplemental Statement of Operations (Exhibit 21(a)). [Technical Staff notes that activity levels may be higher in that there will be more year-round activities.] According to Petitioner, Columbia Country Club's present on-site parking is adequate to handle the demand for the vast majority of the Club's daily activities and events. Situations do arise, typically in the summer, when multiple events, or the extremely popular Fourth of July fireworks display, "approach utilization of all on-site parking." In addition to the creation of more on-site parking, the Club currently uses the following practices to avoiding parking problems: careful calendaring of events; calling in off-duty staff to help facilitate parking at big events; occasional use of off-site parking; and using the services of off-duty Montgomery County police officers to assist in directing traffic at the two site driveways so that vehicles exit the site in a safe and efficient manner.



a clubhouse, large golf course, driving range, tennis and paddle tennis courts and other recreational, service and administrative facilities. An aerial depiction of the planned structures viewed from the north, is shown below, followed by proposed elevations from different vantage points (Exhibit 30):

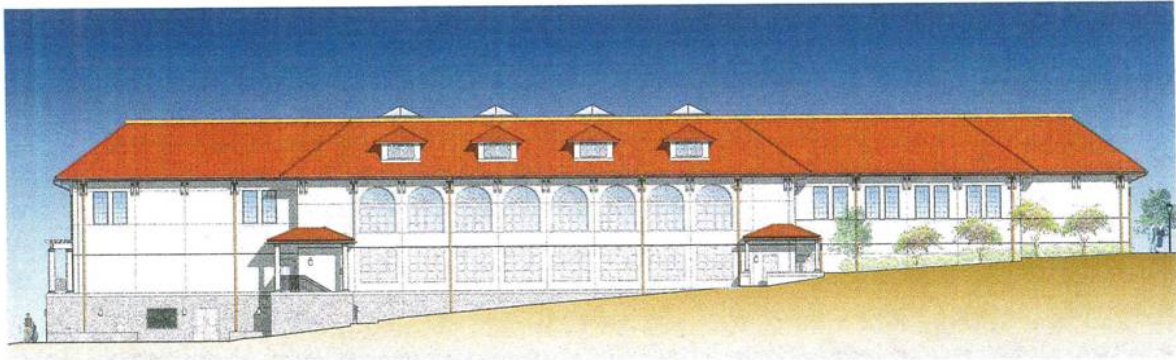


SOUTH ELEVATION

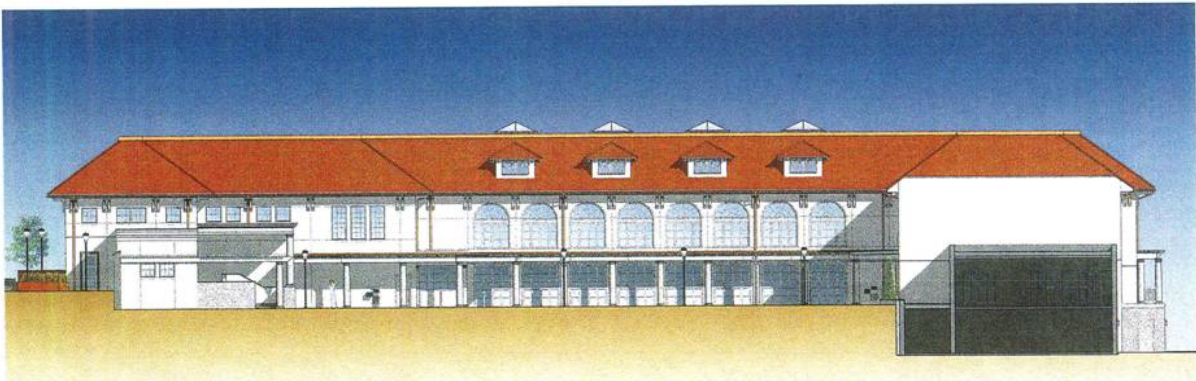


NORTH ELEVATION





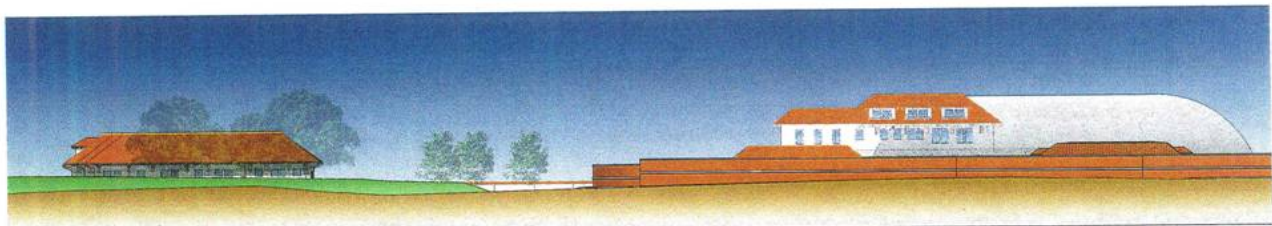
WEST ELEVATION



EAST ELEVATION

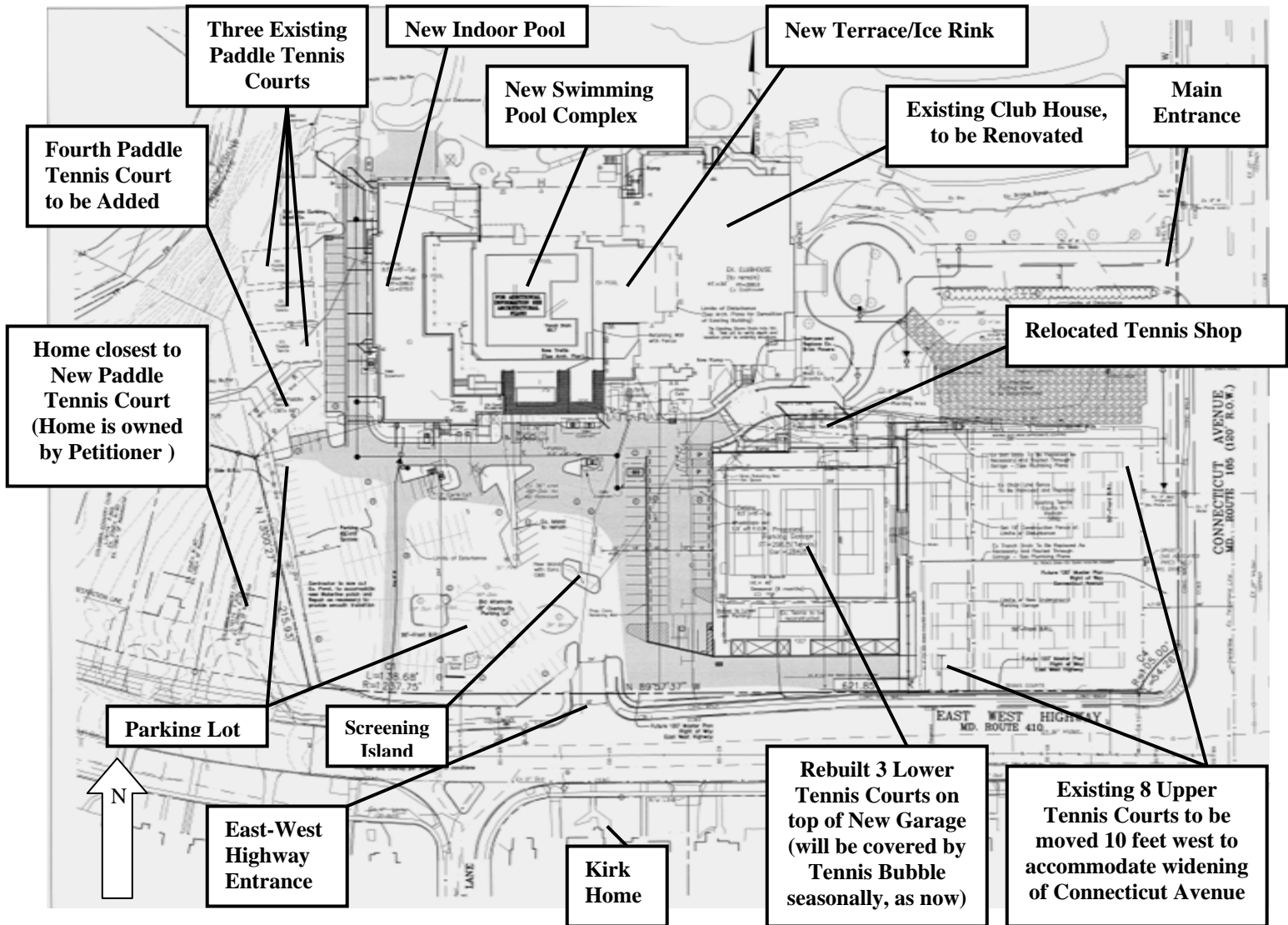


CONNECTICUT AVENUE ELEVATION



EAST WEST HIGHWAY ELEVATION

The Special Exception Site Layout diagram (Exhibit 46(d), Plan Sheet SX-3A), shown below, indicates the planned changes to the facilities:



It should be noted that plans for the new (fourth) paddle tennis court were revised, reorienting the proposed new court, at the suggestion of Technical Staff to reduce the risk of glare from its lights into residences located to the south along East-West Highway. The newly reoriented paddle tennis court and the revised lighting plans and photometric studies are reflected in the new plans filed along with Exhibit 46, as shown above. Technical Staff approved the reorientation of the fourth court in

Exhibit 49, simultaneously recommending approval of a reduction in the 100 foot setback for the court as permitted in Zoning Ordinance §59-G-2.24(d). The requested setback reduction is referenced in notes on the Detailed Site Plan (Exhibit 46(c), Plan Sheet SX-3), which are reproduced below:

1. Gross Tract Area = 146.38 acres or 6,376, 575 sq. ft.	7. Building Coverage (4) 3.0% or 191,297 sf	>1% or 63,389 sf
2. Existing Zoning = R-90	Prop. Family Activities Center / Clubhouse	50,196 sf
3. Existing/Proposed Use=Golf Course/ Country Club	New Tennis Bldg	1,680 sf
4. Club Membership= 1000 Full time Active Members	Ex. Pool Maintenance	2,145 sf
5. Building Area Existing = 77,046 sf	Ex. Snack -Golf	140 sf
Demolished = 8,200 sf	Ex. Golf Maintenance	6,655 sf
Ex. To Remain = 68,846 sf	Ex. Caddie Room	2,573 sf
Proposed = 34,433 sf	(4) Per Section 59-G-2.24 (b)(1) of the Zoning Ordinance	
Total = 103,279 sf.	* Building Coverage reflect areas once construction is complete	
*Building Area includes: Main Clubhouse, Utility/Storage Buildings	8. Building Height (5)	
Caddie Room, and Family Activities Center (F.A.C.), Building Areas exclude Cellars	New Family Activities Bldg.	35'(Main) 22.8'
6. Building Setbacks	New Tennis/Pro Shop	25' (Accessory) 20.0'
	(5) Per Section 59-C-1.327 of the Zoning Ordinance	
	9. Parking Setback	
	Front	30' *
	Side(6)	26' *
	Rear	35' *
	(6) Per Section 59-E-2.83(b)(2) of the Zoning Ordinance, Parking Setback to meet applicable front, rear, and twice the building side setback required and parking setback in R-90 zone. If 200 or more spaces are provided, the required side and rear parking setbacks must be increased by 10' (8x2+10)	
	* Per Section 59-E-2.83(e), the existing surface parking facility included as part of the Special Exception granted before May 6, 2002 is a conforming use and is to remain. The improvements to the existing parking lot do not exceed 50%. Existing parking within existing East-West Highway Right of Way to remain under SHA permit or letter of permission	
	10. Parking Tabulation:	
	Proposed Surface Spaces	237 spaces*
	Proposed Garage Spaces	106 spaces**
	Total Parking Provided	343 spaces (Total)
	* Surface Parking includes 4HC spaces	
	** Garage includes 4 std. HC spaces, 1 Van space and 21 Valet spaces	
	Existing surface parking prior to renovations +/-274 spaces	
	HC spaces Required = 8 (1 Van)	
	HC spaces Provided = 9 (4 surface/5 Garage)	
	2 Van spaces provided, one within surface lot and one within Garage	
	* Zoning Ordinance does not indicate number of parking spaces required for Golf Courses and Country Clubs	
	11. Parking Compound	= 95,350 sf
	Internal Green Space Required = 5.0% or 4,768 sf	
	Internal Green Space Provided = 6.8% or 6,525 sf	

## 2. Requested Reduction in 100 Foot Setback:

Zoning Ordinance §59-G-2.24(d) prescribes a 100 foot setback for any major outdoor activity area adjoining a one-family residential use, but also authorizes the Board to reduce it “where it finds that landscaping, screening, fencing or other measures can mitigate the adverse effects on the adjoining residential use.” Petitioner notes that, at present, all outdoor recreational areas, except for a part of one paddle tennis court and a warming hut, are more than 100 feet from any property line

adjoining a one-family residential use.<sup>10</sup> Petitioner gives the following rationale for requesting a reduction in the general 100 foot setback for the existing facilities and new paddle tennis court :<sup>11</sup>

1. The paddle tennis courts and warming hut are “lightly” used and most often are used during seasons (fall and winter) when people residing in surrounding residentially structures would not be outside in their yards.
2. The activity associated with a paddle tennis court is one of the least intensive recreational uses that occurs on Columbia’s property.
3. Only two of the paddle tennis courts, and the warming hut, are located within the 100-foot setback.
4. Adjacent to the paddle tennis courts is a stream valley with substantial mature vegetation screening the facilities from adjoining residential development.
5. The adjoining residential lots have substantial depth which is also covered with mature vegetation running down toward the stream valley. The closest residence to any of the paddle tennis court facilities is located more than . . . [145] feet from the closest activity point of the facilities.
6. There are only three improved lots located within 100 feet of any paddle tennis court facility. Of those lots, the Petitioner owns two, which are occupied by staff of the Club.
7. The paddle tennis courts are long-standing features of the Club, the use of which is not materially intensified by this modification request.

Technical Staff’s recommendation of approval is expressly based on the above rationale stated by Petitioner (Exhibit 45, p. 22). The Hearing Examiner agrees with Technical Staff that a reduction of the 100 foot setback is appropriate, especially because the closest residence is 145 feet from the closest court (*i.e.*, the proposed fourth court), the courts are well screened by vegetation,<sup>12</sup> and the proposed lighting has been thoroughly reviewed by Technical Staff to make sure that there will not be

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<sup>10</sup> See letter of October 13, 2006, from Petitioner’s attorney, Jody Kline, Esquire, to Sandra Youla of Technical Staff, attached to Exhibit 45. The proposed fourth court would be 23 feet from the property line. Tr. 48. The warming hut will be removed, as reflected in the revised Special Exception Site Layout diagram (Exhibit 46(d), Plan Sheet SX-3A).

<sup>11</sup> *Id.*

<sup>12</sup> The closest residence to the new paddle tennis court is actually owned by Petitioner, as shown on the diagram reproduced on the previous page, and it is well screened, as shown on the aerial photo displayed on page 8 of this report. *See also*, the testimony of Petitioner’s architect, Mario Boiardi. Tr. 50-51.



significant adverse effects on the neighbors. Nevertheless, in order to further reduce the possibility of disturbing nearby residences, the Hearing Examiner recommends a condition specifying that the three existing paddle tennis courts may not be used after 11:00 p.m., and the fourth (southernmost) paddle tennis court may not be used after 9:00 p.m.. According to Eugene Carlin, Chairman of the Long Range Planning Committee of Columbia Country Club, the existing paddle tennis courts are currently restricted to use before 11:00 p.m. (Tr. 32). The fourth court will be considerably closer to the adjacent residences, and therefore an earlier curfew is advisable.

### 3. Lighting:

Technical Staff's review of the proposed lighting was submitted in Exhibits 51 and 51(a).

Staff notes that:

the photometric details on SPE-3 [Exhibit 46(q)] show that the footcandles at the edge of the property exceed 0.1 footcandles in several places, contrary to zoning ordinance requirements. However, . . . there are street lights along the property edge, and hence the photometric readings shown on the plan may not be completely accurate, because it is difficult to distinguish the footcandles attributable to the applicant's lighting fixtures from the footcandles attributable to the street lights. Therefore, based on his experience, review of the plans, and site visits, . . . [Technical Staff] finds the footcandles levels that are shown to be acceptable.

Lighting in residential zones is governed by Zoning Ordinance §59-G-1.23(h), which provides:

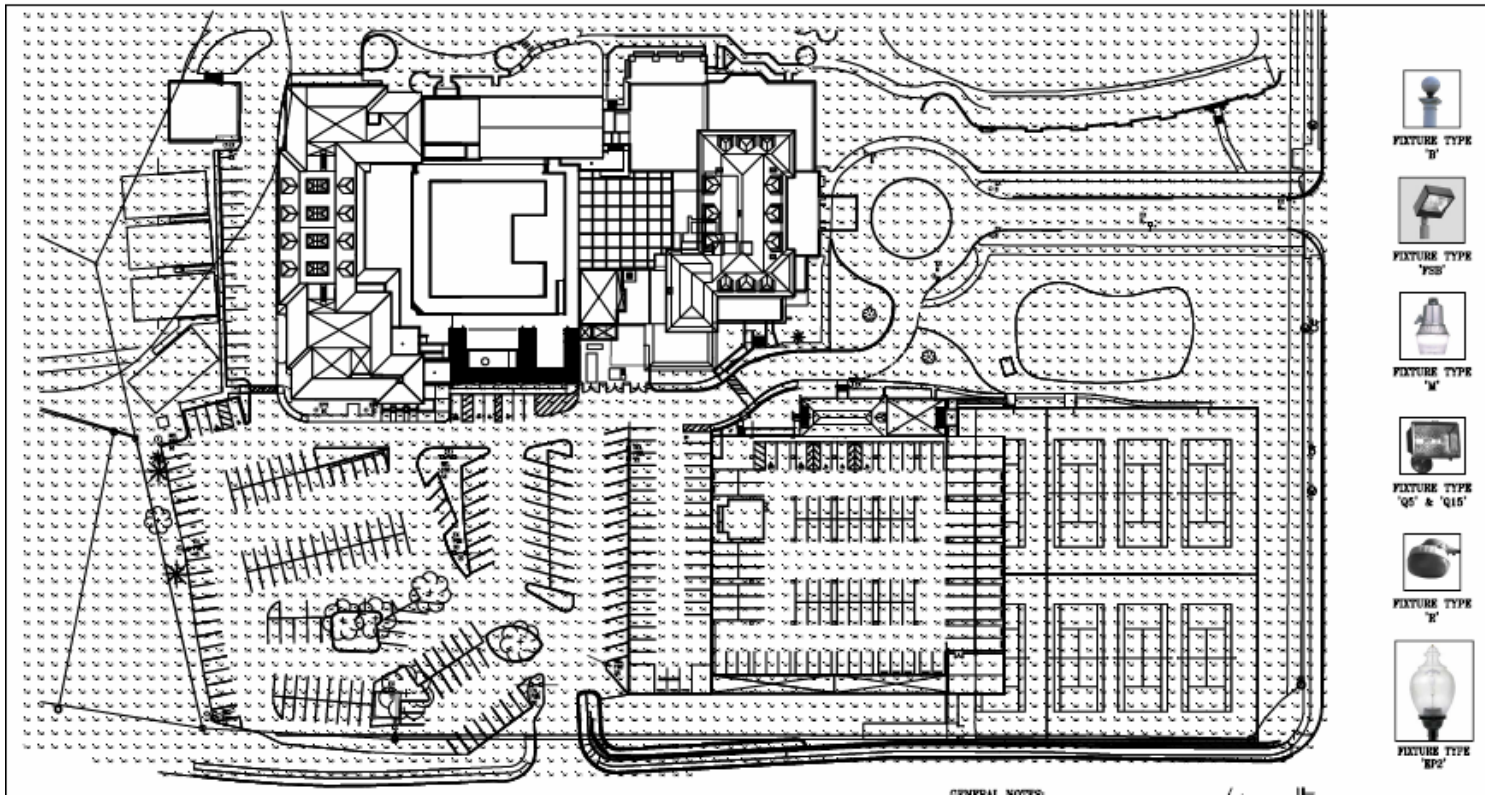
*(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

*(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

*(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Given the Board's authority under this section to allow different standards for recreational facilities or to improve safety, and Technical Staff's finding that the slight exceedances may be reflective of street lighting, not Petitioner's lighting, and that the lighting is appropriate as shown, the

Hearing Examiner finds the lighting specified in Sheet SPE-3 (Exhibit 46(q)) to be compliant with the Zoning Ordinance. That Lighting Plan and photometric study is reproduced below:



### SITE PLAN LIGHTING CALCULATION STATISTICS

DESCRIPTION	AVG	MAX	MIN	MAX/MIN
CALC ZONE #1	0.3 fc	10.8 fc	0.04 fc	10.8/0.04 fc

### ELECTRICAL LEGEND & ABBREVIATIONS

X ← FIXTURE TYPE  
Y ← POLE HEIGHT IN FEET.

EX EXISTING REL RELOCATED  
EQUIP EQUIPMENT VERT VERTICAL  
HORIZ HORIZONTAL

### GENERAL NOTES:

1. ALL FOOT CANDLE VALUES LOCATED OUTSIDE OF ZONE #2 ARE INCLUDED WITHIN ZONE #1 STATISTICS.
2. ALL FOOT CANDLE VALUES INDICATED AS "0.0" ARE ESTIMATED TO BE "0.04" FOOT CANDLES (COMPUTER PROGRAM ROUNDS ALL VALUES UNDER 0.05 FOOT CANDLES DOWN).

### DRAWING NOTES:

- ① FIXTURE AIMING ANGLE ADJUSTED FROM 45° TO 70°.
- ② FIXTURE AIMING ANGLE ADJUSTED FROM 45° TO 30°.

## EXISTING LIGHTING FIXTURE SCHEDULE

TYPE	DESCRIPTION	LENSE/ LOUVER	MOUNTING	VOLTS	LAMP DATA			MANUFACTURER & CATALOG NO.	NOTES
					NO.	WATTS	CODE		
B	EXISTING POLE MOUNTED GLOBE LIGHTING FIXTURE.	WHITE TEMPERED GLASS	10' POLE	120	1	100	100W A19	EXISTING FIXTURE	
FSB	EXISTING POLE MOUNTED METAL HALIDE CUTOFF FLOOD LIGHT.	CLEAR TEMPERED GLASS	1	277	1	400	400 MH	EXISTING FIXTURE	
M	EXISTING POLE MOUNTED MERCURY VAPOR LIGHTING FIXTURE.	ACRYLIC LENS	1	277	1	175	175	EXISTING FIXTURE	
Q5	EXISTING POLE MOUNTED METAL HALIDE LIGHTING FIXTURE.	CLEAR TEMPERED GLASS	13'-15' POLE	277	1	500	500 MH	EXISTING FIXTURE	
Q15	EXISTING POLE MOUNTED METAL HALIDE LIGHTING FIXTURE.	CLEAR TEMPERED GLASS	20'-0" POLE	277	1	1500	1500 MH	EXISTING FIXTURE	
R	EXISTING POLE MOUNTED METAL HALIDE STREET LIGHT FIXTURE.	CLEAR TEMPERED GLASS	20'-0" POLE	277	1	175	175 MH	EXISTING FIXTURE	

LIGHTING FIXTURE NOTES: 1 POLE MOUNTED. REFER TO DRAWING FOR POLE HEIGHT.

## NEW LIGHTING FIXTURE SCHEDULE

TYPE	DESCRIPTION	LENSE/ LOUVER	MOUNTING	VOLTS	LAMP DATA			MANUFACTURER & CATALOG NO.	NOTES
					NO.	WATTS	CODE		
EP2	POLE LIGHT METAL HALIDE	ACRYLIC	POLE	277	1	70	70 MH	HADCO #V71-AT5ND70H277	

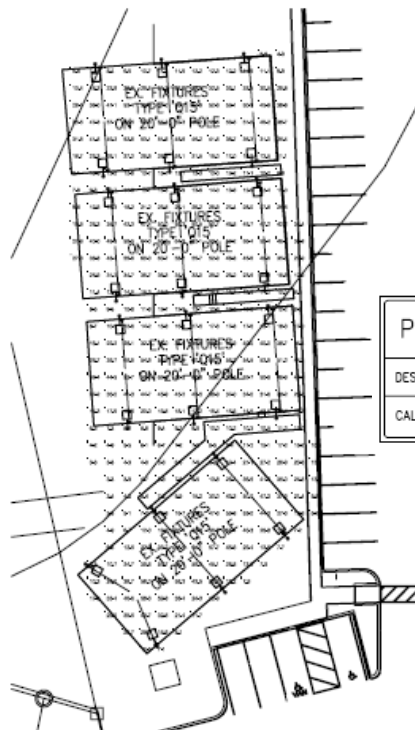
MOUNTING: WR# - WALL, RECESSED, # FEET A.F.F. WS# - WALL MTD., SURFACE, # FEET A.F.F.

D OUTSIDE OF ZONE #2  
STICS.

> AS "0.0" ARE ESTIMATED TO BE "0.04"  
1 ROUNDS ALL VALVES UNDER 0.05

ROM 45° TO 70°.

ROM 45° TO 30°.



## PADDLE BALL COURTS LIGHTING CALCULATION STATISTICS

DESCRIPTION		AVG	MAX	MIN	MAX/MIN
CALC. ZONE #1		28.0 fc	66.3 fc	3.3 fc	66.3/3.3 fc

CALCULATION ZONE #2

PADDLE BALL COURT SITE PLAN - LIGHTING - NEW

SCALE: 1" = 30'-0"



4. Requested Waiver of Requirement for Rear-Yard Location of Accessory Buildings:

Petitioner also seeks a waiver, pursuant to Zoning Ordinance §59-G-2.24(b)(3), of the accessory structure, rear yard location requirement specified in Zoning Ordinance §59-C-1.326(a). The applicability of this provision depends, in part, on the definition of accessory structures. The Zoning Ordinance defines accessory buildings and it defines structures, but does not expressly define accessory structures. An “accessory building” is defined in Zoning Ordinance §59-A-2.1 as:

*A building subordinate, and located on the same lot with, a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or common roof to the main building. . . .*

A “structure” is defined as:

*An assembly of materials forming a construction for occupancy or use including, among others, buildings, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio and television broadcasting towers, telecommunications facilities, water tanks, trestles, piers, wharves, open sheds, coal bins, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks and poles.*

Petitioner suggests that Department of Permitting Services (DPS) does not make a distinction between “main” and “accessory” structures for country clubs and golf courses.<sup>13</sup> Technical Staff reports that they checked with DPS and “got several different interpretations” regarding accessory structures, but eventually, “the DPS zoning supervisor indicated that country clubs, like other uses, have main buildings and accessory buildings.” Exhibit 45, p. 22. Technical Staff added that it also “understood the DPS zoning supervisor to indicate that tennis courts and temporary structures such as tennis bubbles are not viewed as accessory structures, and hence zoning staff does not require any waiver with respect to them.”

It appears to the Hearing Examiner that DPS’s interpretation of the word “structure” does not fully coincide with the above-quoted definition, which clearly includes fences (such as would surround tennis

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<sup>13</sup> See letter of October 13, 2006, from Petitioner’s attorney, Jody Kline, Esquire, to Sandra Youla of Technical Staff, attached to Exhibit 45.



courts) and temporary structures, such as “gospel and circus tents.” Nevertheless, some deference must be given to an administrative agency’s interpretation of its own statute. As stated in *Watkins v. Secretary, Dept. of Public Safety and Correctional Services*, 377 Md. 34, 46, 831 A.2d 1079, 1086), “We must respect the expertise of the agency and accord deference to its interpretation of a statute that it administers.”

Fortunately, the Hearing Examiner need not decide whether the tennis courts and tennis bubble are “structures” or accessory structures within the meaning of the Zoning Ordinance, because the Board of Appeals has already reviewed the tennis courts and the tennis bubble, and decided to permit them in virtually the same location and size as now requested.<sup>14</sup> The present location of the tennis courts was approved by the Board on April 23, 1959 in Case No. 736, and the size, location and terms of use of the present tennis bubble were approved by the Board on August 20, 1996 in CBA-286-A. The doctrine of “administrative law of the case” precludes re-examination in a later proceeding of issues earlier decided in the same case by an administrative body acting in a quasi-judicial capacity, absent good cause (*e.g.*, fraud, surprise, mistake, inadvertence or a new or different factual situation). *See, Schultze v. Montgomery County Planning Board*, 230 Md. 76, 185 A.2d 502 (1962) and *Woodlawn Area Citizens Assoc. v. Board of County Comm’rs*, 241 Md. 187, 194-197, 216 A.2d 149 (1966). The Hearing Examiner finds that none of the changes relating to the tennis court facility and the tennis bubble is material to whether or not they are located in a rear yard, and therefore the “non-rear-yard” status of these two structures (or non-structures, according to DPS) should not be re-examined.

For the same reasons, the compatibility of the tennis bubble should not be re-evaluated. One could certainly argue that the existing (and therefore the planned) tennis bubble is incompatible with the

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<sup>14</sup> As noted on page 14 of this report, the existing tennis bubble will continue to be installed over the lower courts five months a year, although it will be 18 inches higher because it will be reinstalled over the new underground garage. The upper tennis courts will be moved 10 feet away from the eastern property line to make room for expansion of Connecticut Avenue, but will remain the same size. The Hearing Examiner finds that these changes are diminimus, and are unlikely, in and of themselves, to have any adverse effects.

residential neighborhood, as Technical Staff reports one of the neighbors complained (Exhibit 45, pp. 17-18). However, the Hearing Examiner cannot reach this issue either, because it was considered by the Board of Appeals when it approved the present tennis bubble in CBA-286-A, and the bubble will not substantially change under the current proposal. In the resolution resolving that modification petition, the Board addressed the compatibility objections of the nearby neighbors, and found that the bubble's impact would be sufficiently mitigated by landscaping and topography to make it acceptable.<sup>15</sup> In the absence of substantial change, there is no basis for reconsideration of this position by the Hearing Examiner.

The tennis shop falls into a different category than the tennis courts and the tennis bubble because the new one will be larger than the current one, and it is being moved to another location, though quite near where it is presently. It also clearly qualifies as an accessory building. Because neither the present location nor the planned location is in a rear yard, we must address the issue of whether the Board should grant a waiver under Section 59-G-2.24(b)(3). Petitioner suggests the following reasons in support of granting a waiver for the tennis shop:<sup>16</sup>

- a. . . . [The tennis shop has] been in place for many years and represent[s] a fixed feature of the Club's "landscape" and will not be modified in any meaningful way by the pending Special Exception Modification.
- b. The proposed tennis shop will be located approximately 300 feet west of Connecticut Avenue and more than 200 feet north of East-West Highway. In both instances, the proposed shop will be at a lower elevation than the grade of either of these two streets. The tennis building is not visible from East-West Highway because of a brick wall installed along East-West Highway by the State Highway Administration. The tennis building is visible only from certain oblique views from Connecticut Avenue. The design of the tennis building is consistent with the architecture of the main clubhouse and is not distinguishable as a separate building. In other words, its location in what is

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<sup>15</sup> If anything, the bubble will be less visible in the future because of the wall recently constructed by the SHA along East-West Highway.

<sup>16</sup> See letter of October 13, 2006, from Petitioner's attorney, Jody Kline, Esquire, to Sandra Youla of Technical Staff, attached to Exhibit 45.

technically the front yard of the Club's property is neither "jarring" nor inappropriate.

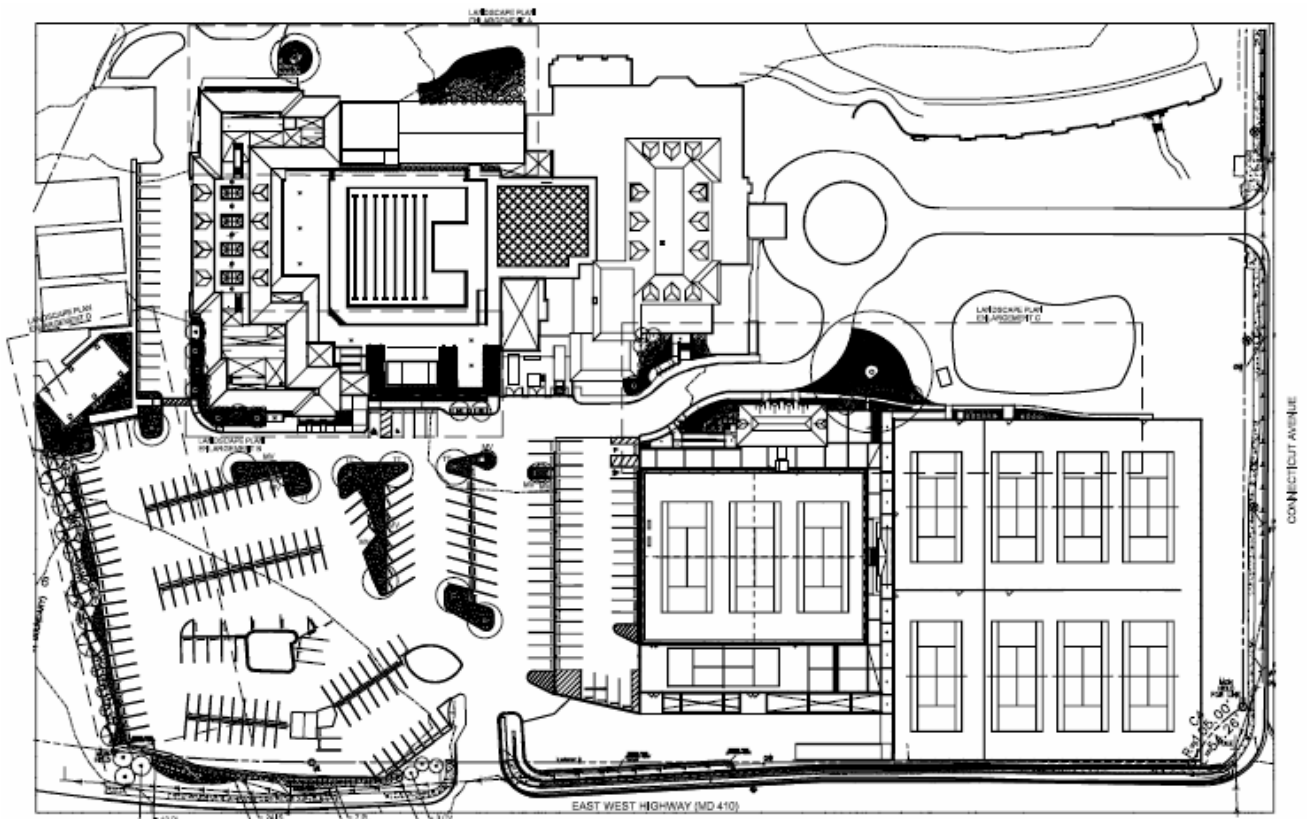
Technical Staff adopted this rationale in recommending approval of the waiver. Exhibit 45, p. 22. The Hearing Examiner agrees because the newly located tennis shop will be designed to blend in with the new clubhouse and will be well screened from both East-West Highway and Connecticut Avenue. Moreover, it is only sensible to locate the tennis clubhouse adjacent to the tennis courts, which are not in the rear yard. Therefore, the Hearing Examiner finds that granting the requested waiver of the accessory structure, rear-yard location requirement specified in Zoning Ordinance §59-C-1.326(a) would be appropriate.

5. Landscaping:

Petitioner proposes to improve the landscaping in a variety of ways. Activities in the Club will be screened by a 10 foot screening wall to be erected by Petitioner and by the wall along East-West Highway erected by the State. According to Petitioner's architect, Mario Boiardi, on the west side of the existing parking lot, Petitioner will plant new Norway spruce trees and viburnum bushes. Those will grow up to be a solid barrier. Tr. 76-77.

The edges of the newly constructed areas in the Club will be treated in landscaping to soften the buildings. On the south side of the building complex, the screening wall will be landscaped with low shrubbery and some crepe myrtle trees. A similar treatment is planned for the southwest corner of the new family activities building. In the parking lot, Petitioner will increase the amount of island space and tree space, with a new parking island opposite the entrance to the property from East West Highway. Along the southern edge of the parking lot, between the parking lot and the East West Highway, Petitioner will improve planting that was put in place by the State Highway Administration. Unfortunately, there is not enough room between the State's wall on East-West Highway and the sidewalk outside the wall to plant any screening landscaping. Tr. 78-80.

Technical Staff found that the landscaping, as shown on the revised plans, was satisfactory and met all requirements. Exhibit 45, p.19. The landscape plan consists of four plan sheets, SX-08 (Exhibit 46(i)); SX-09 (Exhibit 21(r)); SX-10 (Exhibit 46(j)); and SX-11 (Exhibit 21(t)). The overall landscape plan, SX-08 (Exhibit 46(i)), is shown below:



## 01 LANDSCAPE PLAN

### PLANT SCHEDULE - THIS SHEET ONLY

KEY	QTY.	BOTANICAL NAME/ COMMON NAME	SIZE	ROOT	COMMENTS
SHADE / MAJOR TREES					
TT	8	Tilia tomentosa 'Green Mountain' / Green Mountain Silver Linden	3" cal.	B&B	Central Leader, Matched
TT1	2	Tilia tomentosa 'Green Mountain' / Green Mountain Silver Linden	3.5" cal.	B&B	Central Leader, Matched
FLOWERING / MINOR TREES					
CV	3	Chionanthus virginicus / Fringetree	8' ht.	B&B	Single Trunk Tree Form
MV	8	Magnolia virginiana / Sweetbay Magnolia	10' ht.	B&B	Multi-Stem, 3-5 Trunks
PY	3	Prunus x yedoensis 'Akebono' / Akebono Yoshino Cherry	2.5" cal.	B&B	Single Trunk
SHRUBS					
IS	24	Ilex verticillata 'Sparkleberry' / Sparkleberry Winterberry Holly	30" ht.	B&B	provide 3 male pollinators
MP	11	Myrica pennsylvanica / Northern Bayberry	30" ht.	B&B	
PL	19	Prunus laurocerasus 'Otto Luyken' / Otto Luyken Cherry Laurel	24" spd.	B&B	
SN	28	Spiraea nipponica 'Snowmound' / Snowmound Spiraea	30" spd.	cont.	
VR	9	Viburnum rhytidophyllum / Leatherleaf Viburnum	30" spd.	B&B	
PERENNIALS / GROUNDCOVERS / VINES					
	2,375	Sod Lawn	SF		



6. Changes to Staffing:

Petitioner proposes to add 10 full time and 6 part time employees to its staff, bringing the maximum staff level to 265 employees, the limit Technical Staff and the Planning Board recommended. These include a full time Pool Manager and two part-time life guards for the new, year round indoor pool; a supervisor and up to two full-time staff members for the Child Center and Club Activity Room; and four additional employees to staff the additional Food Service Grill Room. It is possible that one full-time employee will also be added to the housekeeping staff. The Fitness Center will be operated by an outside contractor, with an estimated maximum staff during a typical shift of two employees. Because the Club operates seven days a week, there is no time when 100% of the staff is on site. Exhibit 45, p. 13 and Exhibit 19(a). p. 8.

7. Hours of Operation:

Technical Staff reports, based on Petitioner's Statement of Operations (Exhibit 3(a)), that the Club currently operates almost 24 hours per day. Members arrive as early as 6:30 a.m. to use the exercise room or to breakfast at the Club, and staff arrive even earlier. Meetings, social functions and receptions extend to midnight, particularly on Friday and Saturday evenings, and post event clean-up keeps staff on-site into the early morning. The Club is most busy during the mid-day and evenings, particularly in the summer when families spend entire days at the Club taking advantage of its numerous activities, but the Club's primary hours of operation are generally between 8:00 a.m. and 8:00 p.m. These hours will not change, although the intensity of use may increase with the improved facilities.

8. Membership:

Petitioner does not seek to increase its membership by this petition. Its active membership is limited to 875 golf members and 125 non-golf members (*i.e.*, active membership totals 1,000).

Exhibit 45, pp. 12-13 and Tr. 21-23. In addition to the active members, there are 207 “Senior” members, 61 “Social” members and 165 “Surviving Spouse” members. Exhibit 33. Petitioner suggests that “on any given day,” seven to twelve of the non-active members visit the Club, often for lunch or dinner.

9. Impact on Traffic if the Modification Petition is Granted:

A Local Area Transportation Review (LATR) traffic study was performed by Petitioner’s transportation planning expert, Stephen Peterson, under the guidance of Transportation Planning staff. See Exhibit 19(a). Mr. Peterson reviewed the intersections specified by Technical Staff, conducted traffic and pedestrian counts and compared the existing conditions to the standards that are published for the Bethesda Chevy Chase policy area. He testified at the hearing about his results. Tr. 119-125.

The results of the analysis indicated that only the intersection at Connecticut Avenue and East West Highway failed to meet the current congestion standard of 1600 critical lane volume (CLV). Mr. Peterson noted that the club is proposing an additional 16 employees, and he determined that the modification would result in six new trips during both the a.m. and p.m. peak traffic hours.

According to Mr. Peterson, when those trips are assigned to the road network, they result in only a fractional increase in critical lane volume at the Connecticut Avenue and East-West Highway intersection. However, because of that fractional increase, Technical Staff required Petitioner to come up with a mitigation measure, and Petitioner agreed to improve the traffic signals at the intersection of East-West Highway and Connecticut Avenue, replacing the signal heads with light emitting diodes (LEDs), which will give a brighter, stronger signal indication at that intersection. That improvement produces sufficient trip credits to overcome the additional trips that will be generated during the peak hour. The State has approved this measure.

In Mr. Petersen's opinion, the proposed use is not reasonably expected to draw an excessive amount of traffic through local residential streets. Traffic counts at the entrance to the club on East-West Highway and across from a residential area to the south resulted in only four trips between the club and that residential area in six hours. Traffic counts between the Connecticut Avenue entrance to the club and Club Drive resulted in only seven trips in six hours. Mr. Peterson concluded that the club is not drawing trips through the residential neighborhoods.

Mr. Petersen further testified that the proposed development will be served by adequate public facilities; that there were no potential conflicts between the pedestrians and the vehicles as cars move in and off the property or within the parking lot; that circulation patterns on the property, the driveways and parking areas would be "pretty much the same as they are today," except that a garage will be added. He had not looked into interior circulation of the proposed garage, so the Hearing Examiner has recommended a condition requiring Petitioner to file the parking facilities plan for the new garage with the Board of Appeals when it is submitted to DPS. In Mr. Peterson's opinion, the parking is adequate as it exists, and the additional spaces will provide additional capacity.

Transportation Planning staff recommend approval of the application, with two conditions applicable to the special exception petition (Other conditions were suggested for minor subdivision.):

- Limit the number of Columbia Country Club employees to a total of 265 (full and part-time).
- Install LED signal heads at the intersection of East-West Highway (MD 410) and Connecticut Avenue (MD 185), prior to release of building permit, subject to review and approval by State Highway Administration.

These conditions have been recommended by the Hearing Examiner in Part V of this report.

#### 10. Environment:

Petitioner's civil engineer, Stephen Crum, testified (Tr. 111-118) that, under the provisions of Chapter 22-A, the forest conservation ordinance, this site qualifies for a waiver since not more than

5,000 square feet of forest is to be cleared, there will be no forest clearing within the stream valley buffer and the property is not in a special protection area. This exemption was granted by the Environmental Planning Division on October 13, 2006. Petitioner will be providing a forest conservation easement (probably a Category I) to protect forest within the stream valley buffer. Petitioner will also prepare a tree save plan that will protect the trees that are in close proximity to the construction, and that plan will be reviewed by the Park and Planning Commission staff.

Petitioner's storm water management concept was approved by the Department of Permitting Services on April 19, 2006 (Exhibit 48(b)). Petitioner will be providing water quality control on site through structural bioretention facilities. Mr. Crum testified that on-site channel protection was not required by DPS based on the site's position in the water shed, the small amount of new impervious surfaces and the existing facilities that are on the site. According to Mr. Crum, DPS felt that having the water quality controls would be more beneficial to the water shed than requiring stream channel protection because there is a storm drain system that will drain the parking lots and will convey that water to the stream channel.

It is about 150 feet from the new family activities building to the stream, and Mr. Crum indicated that a safe conveyance of the additional runoff can be developed between the family activities center and the stream channel. Only a small amount of impervious surface will be added in this project, and while this will create a small increase in the runoff (as described in Exhibit 48(a)), in Mr. Crum's opinion, it will not adversely affect either the stream channel or the neighbors. On-site ground water recharge is also not required because this is a redevelopment project. The sediment control and the storm water management plans will be approved prior to the issuance of a building permit.



Environmental Planning staff recommended approval of this modification petition, with the condition that a final tree save plan must be submitted to Technical Staff prior to issuance of a sedimentation and erosion control permit. Technical Staff also recommended as a condition that Petitioner must comply with the conditions of the Montgomery County Department of Permitting Service's Stormwater Concept Plan Approval #222593, issued April 19, 2006. Both conditions have been recommended by the Hearing Examiner in Part V of this report. No other environmental issues have been raised by this modification petition, and the Hearing Examiner finds that the environmental concerns mentioned above have been appropriately addressed.

#### **D. The Concerns of the Neighbors**

As mentioned at the beginning of this report, some concerns were raised by neighbors, but there was no direct community opposition to the subject modification petition. In fact, the Hamlet Citizens Association, comprised of 245 nearby residences, expressed its support for the modification petition (Exhibit 22- letter dated October 11, 2006). Technical Staff also contacted the East Bethesda Citizens Association and the Town of Chevy Chase, and neither objected to the modification petition. Exhibit. 45. p. 18.

Two members of the Columbia Country Club called Technical Staff to express their concerns about the amount of parking to be provided, but Technical Staff found the proposed parking to be adequate. Exhibit 45, pp. 22-23. On October 24, 2006, this office received a letter from April D. Schwartz, a neighbor of the Country Club, asking that the Hearing Examiner not approve "night golf," as the lights would be disturbing to the neighborhood (Exhibit 28). No night golf is planned, and in fact no modifications are proposed anywhere near Ms. Schwartz's home. Tr. 7, 70-73.

In addition, the neighbors who live directly across East-West Highway from an entrance to the Country Club (the Kirks) communicated some negative comments to Technical Staff about existing

structures (including the wall erected by the State highway Administration, the current tennis bubble and the existing parking facility), and asked Technical Staff to review the scale of the proposed changes. Exhibit 45, pp. 17-18. Technical Staff did so, and after some changes to the plans, recommended approval, as did the Planning Board. These changes included the addition of screening landscaping, including an island with trees in the parking lot, to help screen the Kirk's view of the facility.

The only community witness to testify at the hearing was Donna Kirk. She testified that she one of her major objections "has to do with the location of the drive and the contour of the land." Because of the slope of the driveway, when a car is coming out in the evening, its headlights are "very visible directly into our front kitchen windows." Tr. 126-127. The problem exists now, and she fears that additional cars will be coming in and out due to the modifications. To remedy this problem, Petitioner negotiated an agreement with the Kirks (Exhibit 32), under which Petitioner will add screening vegetation on the Kirks' property to reduce the penetration of headlights from the Club's driveway on East-West Highway into the Kirks' home. The Hearing Examiner has recommended a condition requiring Petitioner to fulfill this agreement.

Mrs. Kirk testified that she and others dislike the wall installed by the State along East-West Highway, and asked if additional vegetation could be added to screen it, the garage, the tennis bubble and the parking lot. There is nothing the Board of Appeals or the Petitioner can do about the wall recently erected by the State; however, as mentioned above, other problems will be remedied by providing additional buffers, including a screening wall and a tree island. The additional landscaping is discussed above on pages 27 to 28 of this report.

The Hearing Examiner finds that all of the legitimate concerns expressed by the community have been appropriately addressed.

### **III. SUMMARY OF THE HEARING**

#### **A. Petitioner's Case**

At the beginning of the hearing, Petitioner's attorney, Jody Kline, asked that the record remain open to allow Petitioner to supplement its plans, especially with regard to lighting. Counsel also noted that Petitioner had posted five notice signs on the property, but one of the signs, located far from the area to be renovated, was discovered to be missing for about a month. Tr. 10. [The affidavit of posting reflects these facts, and that the missing sign was replaced. Exhibit 50(a).]

Mr. Kline also alleged that the Planning Board's November 2, 2006 letter, prepared by Technical Staff and signed by the Planning Board's Chairman, overstated what actually occurred at the Planning Board meeting of October 26, 2006. Tr. 11-23. In support of this allegation, Mr. Kline produced a transcript of a portion of the Planning Board meeting, which had been prepared in Mr. Kline's office (Exhibit 31).

Of greatest concern to Mr. Kline was the additional condition that the Planning Board imposed in its letter, which required Petitioner to meet with and come to agreement with a neighbor, Duncan Kirk, about landscaping Petitioner would plant, at its own expense, on Mr. Kirk's property to screen the effects of the proposed modifications. Mr. Kline asserts that the Planning Board never discussed or voted to recommend imposition of such a condition. Martin Klauber, the People's Counsel, argued that such a condition would not be within the ambit of the Board of Appeal's powers, in any event. Tr. 15. Petitioner did actually reach an agreement with Mr. Kirk to provide and plant the screening landscaping on Mr. Kirk's property. Tr. 14.

Mr. Kline also discussed the nature of Petitioner's inactive membership, and submitted Exhibit 33, which classifies inactive members as senior, social, and surviving spouse membership. Mr. Kline suggested that only the active membership (875 golf members, 125 non-golf members) would affect

the modification petition.. Tr. 20-23. Mr. Kline further took issue with the size of the general neighborhood, as defined by Technical Staff, arguing that it went much too far beyond the area of the club actually being modified. Tr. 25.

Petitioner called five witnesses at the hearing, Eugene Carlin, Chairman of the Long Range Planning Committee of Columbia Country Club; Mario Boiardi, an architect; James Troppman, general manager of Columbia Country Club; Stephen Crum, a civil engineer; and Stephen Peterson, an expert in transportation planning and traffic engineering. The sole community witness was Donna Kirk, a confronting neighbor.

1. Eugene Carlin (Tr. 28-35, 132):

Eugene Carlin testified that he is the Chairman of the Long Range Planning Committee of Columbia Country Club, and that the Club agrees to be bound by the testimony that it presents and the exhibits it puts into the record. Petitioner seeks to make improvements to the Club, including a new parking garage, a family activities building, a new tennis shop, new swimming pools and a new platform tennis court.

The improvements are intended to serve existing members and correct several maintenance issues. According to Mr. Carlin, the pools are old and in need of major repair. They will be replaced, as will the bowling alley. In the new family activities center, there will be a larger fitness center, as well as exercise rooms. Petitioner considered alternative ways to add parking, and determined that the best location would be to put a garage underneath the tennis courts and increase the number of spaces by about 60 on a net basis.

Mr. Carlin further testified that the hours of operation would remain unchanged, and a few employees would be added. He stated that night paddle tennis is restricted to 11:00 p.m., and he noted the intended location of the proposed fourth court. Mr. Carlin indicated that notice of the proposed



modifications was sent to all neighbors, a meeting was held at the Club, and eventually an agreement was reached with the Kirks, which is contained in Exhibit 32.

2. Mario Boiardi (Tr. 36-106):

Mario Boiardi testified as an expert in architecture. Mr. Boiardi described the layout of the Columbia County Club, and indicated that there is no nighttime outdoor tennis. The tennis bubble is erected for fewer than 180 days each year, and it is opaque, so no internal lighting is observed outside when nighttime tennis is played within. The parking lot has 274 spaces.

According to Mr. Boiardi, the facilities have not had any additions since the 1950s, and they need to keep their facilities up-to-date in order to attract younger members to the club, as older members leave. The amount of floor area is going to be expanding from approximately 77,000 square feet to over 103,000 square feet. A family activities center will be added, changes will be made to the swimming pool complex and additional informal dining venues will be created within the club. The existing tennis shop facility will be replaced, and additional parking will be added.

Mr. Boiardi identified the location of the existing paddle tennis courts and the proposed fourth court, noting that the corner of that paddle tennis court would be a bit more than 20 feet from the corner of the residential property lines. However, the distance from the houses on the closest properties to the proposed paddle tennis court is about 150 feet. Those properties front on East West Highway, and the closest one is owned by the Petitioner (though it is not part of the special exception site). The space between the backyards of those houses and the property in the intervening stream valley is heavily wooded. The ground also drops away from the high ground of the parking lot of the club.

According to Mr. Boiardi, when you are standing on the paddle tennis courts it is very difficult to see the second house in that row. The first house, which the club owns, is more visible but they are both heavily screened with vegetation. Tr. 50-51. Mr. Boiardi observed play on the existing paddle

tennis courts in the evening and described it as “quiet.” He stated that the paddle tennis ball itself does not make a lot of noise when it impacts the surface of the court. By aiming the lights that face towards the nearby residences down on the court itself, Petitioner will be able to reduce the foot candle levels at that property line to less than one-tenth of a foot candle, which complies with the regulation. The lights on the new court would also be shielded so that when the occupants of the nearby houses are looking north through their woods, they would not see a luminous source, or if they did, it would be very minor. The paddle tennis courts are the only outdoor nighttime sports activities at the Club, so there should be no other lighting issues.

Mr. Boiardi further testified that the family activities building will incorporate a 75 foot indoor swimming pool, which will be used for lap swimming and aerobics classes. He then described the other pool facilities and the new clubhouse and its extension. Mr. Boiardi indicated that this is a two-story building with a basement, buried into grade more than a fully story, which helps minimize the bulk of the building. When one sees the club property from East West Highway, the clubhouse appears to be almost residential in size. As one extends north, the property drops to the right and slopes down to the golf course, so that on the northwest corner of that new building would be three stories exposed. According to Mr. Boiardi, for building code purposes, it is considered to be a two-story building.

Mr. Boiardi further described the proposed facilities, including a new garage for 106 cars, under the lower tennis courts, and the movement of the fence for the upper tennis courts to allow for a 10 foot widening of Connecticut Avenue. Three of the lower tennis courts will continue to be covered seasonally with the tennis bubble, while the fourth lower tennis court will be reduced in size so that it will be merely a backboard area.

The new tennis shop is located to the north of those three tennis courts. It is necessitated in that location because it must be immediately adjacent to the courts. It also controls the flow of people in and out of the tennis bubble in the winter, and the tennis bubble entrance is in that location. The size of the shop has increased by about 70-80 percent. It improves seating areas for club members and improves working conditions for the professional staff.

Mr. Boiardi testified that the new garage is needed because about 40 parking spaces in the existing parking lot will be lost when the other recreational facilities are expanded. The garage will result in a net gain of 66 spaces, leaving the total at 340 parking spaces. There were no good alternatives to the chosen location. The new garage will be completely underground. Along the southern edge of the garage, the top of the garage is at grade. Along the eastern edge of the garage, the garage is below the existing level of the tennis courts. Along the northern side the garage, it is approximately a foot out of grade, and at the northwest corner of the garage, it is about four or five feet out of grade. This is the condition which exists with the current tennis courts, which are actually four to five feet above the level of the existing parking lot.

An adjustment is being made in order to get enough clearance to have the garage ramp slope down at an appropriate rate, which is five percent or less. To do so, the playing surface of the three lower courts is being raised approximately 18 inches from its current elevation. Thus, the height of the bubble will be approximately 18 inches higher when erected. [Mr. Kline indicated that a parking facilities plan for the garage would be submitted as part of the building permit application, and he will supply a copy to the Board of Appeals. Tr. 63-64.]

Since the same tennis bubble will be used, and it will be only 18 inches higher than before. In Mr. Boiardi's opinion, an observer would not be able to ascertain the difference.

In the winter months, the Club will erect a 40 foot by 60 foot ice rink in the center of the terrace. Activities in the Club will be screened by a 10 foot screening wall to be erected by Petitioner and by the wall along East-West Highway erected by the State. Mr. Boiardi discussed the landscape plans for the areas impacted by new building. The edges of the newly constructed areas in the Club will be treated in landscaping to soften the buildings. On the south side of the building complex, the screening wall will be landscaped with low shrubbery and some crepe myrtle trees. A similar treatment is planned for the southwest corner of the new family activities building. In the parking lot, Petitioner will increase the amount of island space and tree space, with a new parking island opposite the entrance to the property from East West Highway, and along the southern edge of the parking lot between the parking lot and the East West Highway, Petitioner will improve planting that was put in place by the State Highway Administration. [Mr. Kline indicated that there was not enough room between the State's wall on East-West Highway and the sidewalk outside the wall to plant any screening landscaping.] On the west side of the existing parking, Petitioner will plant new Norway spruce trees and viburnum bushes. Those will grow up to be a solid barrier.

Mr. Boiardi indicated that he would continue to work with his lighting consultant to submit a lighting plan that would reduce hot spots on the property, achieve the required foot candle readings on the perimeter and ensure that there will be no objectionable conditions for surrounding properties.

Mr. Boiardi further testified that it would be appropriate to waive the rear yard accessory building requirement because the main accessory building involved, the tennis shop, is set well back from Connecticut Avenue, and reconstructing it a bit closer to Connecticut Avenue is not a significant impact. Moreover, in his opinion, there is an architectural harmony and integration of the tennis shop within the building complex in terms of materials, details, and scale, so the tennis shop is not an objectionable feature. The tennis bubble itself is a previously approved special exception, and



Petitioner is seeking to continue that with the new structure underneath.

Mr. Boiardi opined that the proposed use meets the standards and criteria for the granting of a special exception, or modification of a special exception, under Zoning Ordinance §59-G-2.24 for golf courses and country clubs because the use is typical for that type of facility, and the proposed new buildings are consistent. The development standards for setbacks, other than the ones subject to waiver, are in conformance with the development standards, and the overall height is also in conformance with those development standards. The photometric analysis and the lighting plan to be provided will satisfy the standards regarding lighting, and the use be in harmony with the character of the surrounding neighborhood, both in terms of the use itself and the design. There is one other country club on Connecticut Avenue, and there is another large institution south of this site on Connecticut Avenue, the 4-H Center, so there are other campuses in the surrounding neighborhood south of the Columbia. Columbia blends with the community character, and the additions to the clubhouse will seek to preserve that character and extend it into the new additions so that the balance that exists between the recreational use and the surrounding residential uses will be preserved, maintained and extended.

April D. Schwartz, [a neighbor who wrote to OZAH expressing her concerns about the possibility of night golf], lives at 8611 Lancaster Drive. Mr. Boiardi testified that Lancaster Drive runs parallel to the farthest northwestern boundary of the golf course. Houses on the east side of Lancaster Drive border the golf course. Ms. Schwartz is not close at all to the paddle tennis courts, and she would not be affected by any change that is being proposed here.

Mr. Boiardi indicated that the improvements might yield an increase in low season activity at the Club, but that would not adversely affect the community around it because it will not rise even close to the level of summer activity, and it will be largely indoors.

3. James Troppman (Tr. 107-110):

James Troppman testified that he is the general manager of Columbia Country Club. He stated that the peak of the Club's operations is in the summer when the pools are open. Petitioner uses contract valet parking for dinner service when the formal dining rooms are used for large private parties. The valet parking is all on site. If there will be very large crowd, employees are used to park cars on the east side of Connecticut Avenue, but not on the public street. Having the garage will minimize the amount of moving autos on the site and the off-site parking. Mr. Troppman indicated that, in his opinion, the parking garage will provide adequate parking so Petitioner can handle its parking on site for 95 percent of the events that the club will have in the foreseeable future.

Mr. Troppman further testified that the Club has a Fourth of July event with fireworks at about 9:00 p.m. The community gathers around the club to watch it. Most of the neighbors who live in the neighborhood will walk across, but cars actually stop on the streets during the fireworks, and the Montgomery County Police help out for traffic control.

4. Stephen Crum (Tr. 111-118):

Stephen Crum testified as an expert in civil engineering. He anticipates that the record plat will be recorded within six to eight weeks, after the forest conservation easement is taken care of. As part of that platting of the property, Petitioner will be dedicating a right-of-way along Connecticut Avenue and several other streets in accordance with the Master Plan.

Mr. Crum further testified that, under the provisions of Chapter 22-A, the forest conservation ordinance, this site qualifies for a waiver since not more than 5,000 square feet of forest is to be cleared, there is no forest clearing within the stream valley buffer and the property is not within a special protection area. This exemption was granted by the Environmental Planning Division on October 13, 2006. Petitioner will be providing a forest conservation easement (probably a Category I)

to protect forest within the stream valley buffer. Petitioner will also prepare a tree save plan that will protect the trees that are in close proximity to the construction, and that plan will be reviewed by the Park and Planning Commission staff.

Mr. Crum indicated that a storm water management concept was approved by the Department of Permitting Services on April 19, 2006. Petitioner will be providing water quality control on site through structural bioretention facilities. On site channel protection was not required by DPS based on the site's position in the water shed, the small amount of new impervious surfaces and the existing facilities that are on the site. The Department of Permitting Services felt that having the water quality controls would be more beneficial to the water shed than requiring stream channel protection because there is a storm drain system that will drain the parking lots and will convey that water to the stream channel. It is about 150 feet from the new family activities building to the stream, and a safe conveyance of the additional runoff can be developed between the family activities center and the stream channel. Only a small amount of impervious surface will be added in this project, and while this will create a small increase in the runoff, in Mr. Crum's opinion, it will not adversely affect either the stream channel or the neighbors. On-site ground water recharge is also not required because this is a redevelopment project. The sediment control and the storm water management plans will be approved prior to the issuance of a building permit.

According to Mr. Crum, public sewer and public water be adequate to serve the proposed use, and the proposal meets all of the applicable development standards, as shown on the development table on the special exception site plan. In Mr. Crum's professional opinion, the proposed use, from an engineering perspective, will not have any detrimental effect on the surrounding properties, and it will be served by adequate public facilities and meet applicable environmental standards.

5. Stephen Peterson (Tr. 119-125):

Stephen Peterson testified as an expert in transportation planning and traffic engineering. He testified that he performed a Local Area Transportation Review (LATR) traffic study in accordance with the normal procedures published by the M-NCPPC and the directions of Transportation Planning staff. Mr. Peterson reviewed the intersections specified by Technical Staff, conducted counts, and went through an existing conditions analysis to determine current level of traffic activity versus the standards that are published for the Bethesda Chevy Chase policy area.

The results of the analysis indicated that the only studied intersection that failed under the congestion standards is at Connecticut Avenue and East West Highway. Since there are no other projects that are either planned, approved or under construction that would add background trips, the only impact to be incurred at that intersection would be due to the activity at the club. Mr. Peterson indicated that the club is proposing an additional 16 employees, and he went through several different types of analysis to demonstrate there is essentially no impact. Nevertheless, the modification would result in six new trips during both the a.m. and p.m. peak hours of traffic.

According to Mr. Peterson, when those trips are assigned to the road network, they result in only a fractional increase in critical lane volume (CLV) at the Connecticut Avenue and East West Highway intersection. When you round it, it shows a zero change. But, because of that fractional increase, Technical Staff required Petitioner to come up with a mitigation measure. Because the state just got through spending millions of dollars improving that intersection, there are no more practical construction improvements that can be made at that location. So instead, Petitioner agreed to improve the traffic signals at the intersection of East-West Highway and Connecticut Avenue, replacing the signal heads with light emitting diodes (LEDs), which will give a brighter, stronger signal indication at



that intersection. That improvement produces sufficient trip credits to overcome the additional trips that will be generated during the peak hour. The State has approved this measure.

In Mr. Petersen's opinion, the proposed use is not reasonably expected to draw an excessive amount of traffic through local residential streets. Traffic counts at the entrance to the club on East-West Highway and across from a residential area to the south resulted in only four trips between the club and that residential area in six hours. Traffic counts between the Connecticut Avenue entrance to the club and Club Drive resulted in only seven trips in six hours. Mr. Peterson concluded that the club is not drawing trips through the residential neighborhoods.

Mr. Petersen further testified that the proposed development will be served by adequate public facilities; that there were no potential conflicts between the pedestrians and the vehicles as cars move in and off the property or within the parking lot; that circulation patterns on the property, the driveways and parking areas would be "pretty much the same as they are today," except that a garage will be added, and he had not looked into interior circulation in the proposed garage. In Mr. Peterson's opinion, the parking is adequate as it exists, and the additional spaces will provide additional capacity.

## **B. Community Witness**

### Donna Kirk (Tr. 126-129):

Donna Kirk testified that she and her husband live at 3918 East-West Highway, directly across the street from an entrance to the Club, and one of her major objections "has to do with the location of the drive and the contour of the land." Because of the slope of the driveway, when a car is coming out in the evening, its headlights are "very visible directly into our front kitchen windows." The problem exists now, and she fears that additional cars will be coming in and out due to the modifications.

Mrs. Kirk testified that she is aware that an island (with trees) was going to be installed in the parking lot to help screen the facility from her view, but she feared it would not mitigate the headlight problem. She also indicated her dislike for the wall installed by the State along East-West Highway and asked if additional vegetation could be added to screen it, the garage, the tennis bubble and the parking lot.

On cross-examination, Mrs. Kirk testified that the landscaping Petitioner agreed to install on her property would hopefully alleviate the headlight problem, but she wanted to go on record with her concerns.

### **C. People's Counsel**

Martin Klauber, the People's Counsel, participated in the hearing, but did not call any witnesses. Mr. Klauber did state the position of his office in support of the modification petition (Tr. 134-135):

The Office of the People's Counsel supports this special exception modification. Columbia Country Club has been a marker in Bethesda . . . [and has] existed on its site for many years. It has been a good neighbor for that amount of time.

And this looks like a well thought out, good redevelopment to make it more attractive for its members. It will not have a deleterious effect on the community that's grown up around it. For those reasons, I recommend that the Hearing Examiner recommend approval with all of the conditions except the one . . . [calling for providing landscaping on the Kirks' property].<sup>17</sup>

## **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in

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<sup>17</sup> See discussion in footnote 2 of this report.

others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. At the beginning of this report, we noted that because the proposed modifications would expand floor area by more than 7,500 square feet, under Zoning Ordinance §59-G-1.3(c)(4)(A), the Board may require that the underlying special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if it finds that the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. Otherwise, the inquiry must be limited to discussion of those aspects of the special exception use that are directly related to the proposed modifications.

Thus, the threshold issue in this case, established by Zoning Code §59-G-1.3(c)(1), is whether the proposed modifications, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

The use will, of course, remain a country club and golf course under Zoning Code §59-G-2.24. The overwhelming weight of the evidence supports the testimony of Petitioner's witnesses that the improvements can be implemented without substantially changing the nature, character and intensity of the use of club property, and the Hearing Examiner so finds. As discussed in the following pages, based on the testimony and evidence of record, the Hearing Examiner concludes that the Petitioner will continue to meet both the general requirements for special exceptions and the specific

requirements spelled out in Zoning Ordinance §59-G-2.24 for golf and country clubs, as long as Petitioner complies with the conditions set forth in Part V, below.

### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff has identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with golf and country clubs. Characteristics of the proposed modifications that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modifications that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff suggests that the inherent characteristics of a golf and country club include:

club building facilities, indoor and outdoor recreational facilities, parking, a golf course, members, employees, administrative operations, social events, a fairly intense level of on-site activity, outdoor lighting, and some outdoor noise. [Exhibit 45, Appendix p. i.]

Technical Staff asserts that the only non-inherent characteristic of this application is the site's location adjacent to the wall built along East-West Highway by the State Highway Administration. Staff characterizes the wall as "not particularly residential in character" and notes that the Club has no control over the wall, and has no way to improve its appearance with greenery, given the lack of planting space between it and the sidewalk. Therefore, Technical Staff finds no inherent or non-inherent adverse effects associated with the use sufficient to warrant denial of the modification petition.

The Hearing Examiner agrees that the State wall is a non-inherent characteristic of the site; however, the Hearing Examiner's analysis is different from Technical Staff's on why it should not be a basis for denial of this petition. The fact that the Petitioner cannot affect a non-inherent characteristic of a site does not mean that a special exception should be granted in spite of it, as Staff suggests. If the non-inherent condition has severe adverse effects on the neighborhood in conjunction with the proposed use, then the special exception should be denied, even if the non-inherent condition is beyond the petitioner's control. It is often the nature of site conditions that they are beyond a petitioner's control. Yet, the State wall is not a disqualifier in the subject case because the special exception already exists, and nothing in either the existing special exception or in the proposed changes would make the effect of the State wall more adverse than it already is. In other words, it is not the special exception or its modification that will create a problem, it is the existence of the State wall itself. Therefore, the State wall cannot be a basis for denying this modification petition.

The Hearing Examiner believes that the tennis bubble could also be characterized as a non-inherent characteristic of this site, given its location in a residential zone and the absence of any



evidence that similar tennis bubbles are consistently found in golf and country clubs located in residential zones. However, as discussed in Part II.C.4 of this report (pp. 24-26), the Board has already approved the same tennis bubble in a prior proceeding, and therefore that issue is not before the Hearing Examiner.

There appear to be no other non-inherent characteristics of the site, since the Club has the facilities one might ordinarily expect in a golf and country club. Therefore, there are no non-inherent characteristics which warrant denial of this petition.

### **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

#### **Sec. 59-G-1.21. General conditions:**

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Golf and country clubs (Zoning Code §59-G-2.24) are permitted as special exception uses in the R-90 Zone by virtue of Zoning Ordinance §59-C-1.31(e), and the use already exists in this case.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: As described in Part IV. C., below, the proposed modification would comply with the standards and requirements set forth for the use in Code §59-G-2.24.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property lies within the area analyzed by the *Bethesda-Chevy Chase Master Plan* (April 1990). To paraphrase Technical Staff, the Master Plan recommends the continuation of “country clubs and other large land users,” including the Columbia Country Club (pp. 38-40 ) and implementation of the Green Corridors Policy (pp. 30, 31, 32, and 38), which recommends, *inter alia*, design guidelines including landscaping along rights of way on major highways to stabilize the residential character of the area and the granting of special exception modifications only if the modifications are compatible in terms of style of architecture and scale with the nearby residential structures and neighborhoods (p. 31). Technical Staff found the landscaping to be appropriate and the modifications to be compatible in terms of style and scale. Exhibit 45, p. 19.

It should also be noted that the Master Plan recommends continuation of R-90 zoning, and the subject use is permissible by special exception in that zone. The Hearing Examiner agrees with the Technical Staff's conclusion that the application is in conformance with the *Bethesda-Chevy Chase Master Plan* (April 1990).

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Zoning and Community-Based Planning staff found the proposed improvements compatible with the neighborhood in terms of design and scale. Exhibit 45, p.19. Traffic will be marginally increased by the changes, and Petitioner has agreed to a mitigation plan approved by Technical Staff to compensate for the slight increase, as discussed in Part II.C.9 (pp. 30-31) of this report. The on-site parking will be significantly increased by the proposal, and Technical Staff indicates that both the proposed total number of spaces (340)<sup>18</sup> and the parking management plan are sufficient (Exhibit 45, pp. 22-23), as discussed in Part II. C. 1 of this report (pp. 14-15). The use has co-existed in harmony with the neighborhood for almost a century, and the proposed modifications will not change that relationship.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the requested modifications would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, for the reasons stated in response to the previous general condition.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

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<sup>18</sup> Notes on the Detailed Site Plan (Exhibit 46(c), Plan Sheet SX-3) indicate the total number of parking spaces will be 343. Since this number exceeds the number (340) which Technical Staff has found to be adequate, this discrepancy does not warrant denial of the petition.

Conclusion: The subject property has been improved with this golf and country club since 1911. There is no evidence that the use has caused objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity in the past. The Hearing Examiner finds that the requested modifications will not change those operational characteristics. The only concern in this regard is lighting for the proposed fourth paddle tennis court, and Technical Staff has thoroughly reviewed this issue and required changes in Petitioner's plans to ensure that nearby residences would not be adversely affected. Concerns from the Kirks, who live across the street from the East-West Highway entrance to the Club, have been addressed by installation of landscaping both on the subject site and on the Kirks' property, with their agreement. *See Exhibit 32.*

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The Hearing Examiner concludes that the proposed modifications will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. Moreover, as stated above, this special exception use is consistent with the recommendations of the applicable Master Plan, and therefore, under the terms of this provision, it does "not alter the nature of an area." Technical Staff reports the following special exceptions in the general neighborhood:

- |         |   |
|---------|---|
| BA 1315 | Non-resident medical practitioner's office, 7801 Connecticut Avenue, granted 11/13/62.                                  |
| BA 2122 | Addition to and continued use of a private club, Women's Club of Chevy Chase, 7931 Connecticut Avenue, granted 1/24/67. |

CBA-1516-B Modification to nursing home, 8700 Jones Mill road,  
granted 10/10/91.

S-1850 Accessory apartment, 7905 Rocton Avenue, approved  
5/7/91.

Thus, as observed by Technical Staff, there are few special exceptions in the neighboring single-family residential areas, and the modifications to the Columbia Country Club will not, by dint of number, scope, or intensity change the predominantly residential character of the neighborhood or alter it adversely.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed modifications would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The continuation of the golf and country club that has existed for 95 years at this location will continue to provide service to the community, and will have no adverse effect on any of the listed individuals.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

(i) *If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review[LATR] and the Policy Area*

*Transportation Review[PATR],<sup>19</sup> as required in the applicable Annual Growth Policy.*

*(ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Although a minor subdivision for the subject site is in process, under Montgomery County Code §50-35A(a), it does not require a preliminary plan of subdivision, and the Board of Appeals must therefore determine the adequacy of public facilities. The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities. Public water and sewer serve the site and are adequate. Tr. 115. By its nature, the site will require no school services.

A traffic impact study (Exhibit 19(a)) was prepared by Petitioner's transportation planning expert, Stephen Peterson, and reviewed by Transportation Planning Staff. Traffic will be marginally increased by the changes, and Petitioner has agreed to a mitigation plan approved by Technical Staff to compensate for the slight increase, as discussed in Part II.C.9 (pp. 30-31) of this report. Technical Staff concluded that "The use is served by adequate public facilities as discussed in the staff report and will not reduce the safety of vehicular or pedestrian traffic" Exhibit 45, Appendix p. iii. The Hearing Examiner accepts these un rebutted findings.

### **C. Specific Standards: Golf Course and Country Club.**

The specific standards for a golf course and country club are found in Zoning Ordinance § 59-G-2.24. The Technical Staff report and the Petitioner's written evidence and testimony provide

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<sup>19</sup> Policy Area Transportation Review (PATR) standards do not apply to this post-July 1, 2004 Petition.



sufficient evidence that the proposed modifications would be consistent with these specific standards, as outlined below.

**Sec. 59-G-2.24. Golf course and country club**

*A golf course or country club must adhere to the following standards and requirements:*

(a) *The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed in connection with such use, provided the availability of such services is not reasonably expected to draw an excessive amount of traffic through local residential streets.*

Conclusion: Based on the record, the Hearing Examiner finds that the provision of food, refreshments and entertainment for club or organization members and their guests is not reasonably expected to draw an excessive amount of traffic through local residential streets. Technical Staff so concluded based upon the fact that adequate on-site parking would be provided and that parking would be properly managed without the need for parking on neighboring streets. Exhibit 45, Appendix p. iv. Stephen Petersen, Petitioner's transportation planner, testified, based on traffic counts, that Club services were not expected to draw an excessive amount of traffic through local residential streets. Tr. 122-123. Traffic counts at the entrance to the club on East-West Highway and across from a residential area to the south resulted in only four trips between the club and that residential area in six hours. Traffic counts between the Connecticut Avenue entrance to the club and Club Drive resulted in only seven trips in six hours. Mr. Peterson therefore reasonably concluded that the club is not drawing trips through the neighborhood.

(b) *All standards of the applicable zones must apply except:*  
(1) *Maximum building coverage - 3%*  
(2) *Minimum setback for a main building - 50 feet*

(3) *The Board may waive the provisions of Sec. 59-C-1.326(a) regarding the location of accessory buildings.*

(4) *The site must have a minimum of 200 feet of frontage on a road of arterial or higher classification in a residential zone.*

Conclusion: All applicable development standards have been met in this case except for the rear-yard placement requirement for accessory buildings, which may be waived under item (3) of this section. Petitioner has sought such a waiver, and the Hearing Examiner recommends that it be granted for the reasons discussed at length in Part II.C.4 of this report at pp. 24-27. The applicable development standards are set forth in notes on the Detailed Site Plan (Exhibit 46(c), Plan Sheet SX-3), which is reproduced on page 19 of this report.

(c) *All outdoor lighting must be located, shielded, landscaped or otherwise buffered so that no direct light intrudes into any residential area.*

Conclusion: As discussed in Part II.C.3 of this report, all external lighting for the Club has been examined by Technical Staff and found to be appropriate. Technical Staff required changes in Petitioner's plans for the proposed fourth paddle tennis court and its lighting to ensure that nearby residences would not be adversely affected. Concerns about headlights, raised by the Kirks, who live across the street from the East-West Highway entrance to the Club, have been addressed by installation of landscaping both on the subject site and on the Kirks' property, with their agreement. See Exhibit 32. Based on this record, the Hearing Examiner finds that no direct outdoor lighting from the Club intrudes into any residential area.

(d) *All major outdoor activity areas, such as tennis courts, swimming pools, and golf course playing surfaces must be set back at least 100 feet from property lines adjoining a one-family residential use. The Board may reduce this setback where it finds that landscaping, screening, fencing or other measures can mitigate the adverse effects on the adjoining residential use.*

Conclusion: Petitioner seeks a reduction in this setback requirement for one of the existing paddle tennis courts and for the planned new one, as this section expressly permits where the Board “*finds that landscaping, screening, fencing or other measures can mitigate the adverse effects on the adjoining residential use.*” The Hearing Examiner finds that the record in this case supports such a determination, as discussed in Part II.C.2 (pp. 19-21) of this report. Although the nearest residential property line is only 23 feet from the corner of the proposed fourth paddle tennis court, the nearest home is 145 feet from the closest court (*i.e.*, the proposed fourth court), the courts are well screened by vegetation, and the proposed lighting has been thoroughly reviewed by Technical Staff to make sure that there will not be significant adverse effects on the neighbors. To further ameliorate any adverse effects, the Hearing Examiner has suggested a condition limiting use of the fourth (southernmost) paddle tennis court to before 9:00 p.m.

(e) *Any golf course established by special exception before May 6, 2002 is a conforming use and may be modified in accordance with the special exception standards in effect at the time the modification is filed.*

Conclusion: The proposal is being reviewed under the special exception standards in effect at the time the modification was filed.

#### **D. General Development Standards**

In addition to the other general and specific standards set forth above, “*Special exceptions are subject [under Code § 59-G-1.23(a)] to the development standards of the applicable zone where the special exception is located [in this case, R-90] except when the standard is specified in Section G-1.23 or in Section G-2.*” For this special exception, some development standards were specified in Section 59-G-2.24, and Petitioner is compliant with those, as well as the R-90 Zone standards,

except as discussed above. The Board is empowered by Section 59-G-2.24 to allow the exceptions under the evidence of this case, and that action is recommended by the Hearing Examiner.

The remainder of Zoning Ordinance §59-G-1.23 concerns consistency with the forest conservation and water quality plans, signs that comply with Code § 59-F, compatibility of new or altered structures with the residential zone and limits on leakage of lighting into the neighborhood. All of these issues have been discussed already in this report, except for signage, which Petitioner does not propose to change in this modification petition.

In sum, it is clear from the record that the proposed modifications will not change the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. The Hearing Examiner must therefore recommend that the Board of Appeals grant the modification petition and related requests, with the conditions suggested in the final section of this report.

## **V. RECOMMENDATION**

Based on the foregoing analysis and a thorough review of the entire record, I recommend that Petition No. CBA-286-B for modification of the existing special exceptions to allow changes to the facilities, parking and staff, and for a waiver of the accessory structure-rear yard location requirement specified in Zoning Ordinance §59-C-1.326(a) and reduction of the 100 foot outdoor-activity setback requirement specified in Zoning Ordinance §59-G-2.24(d), be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special

- exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.
3. Petitioner must comply with the conditions of the Montgomery County Department of Permitting Service's Stormwater Concept Plan Approval #222593, issued April 19, 2006.
  4. Petitioner must submit a final Tree Save Plan to environmental staff of the M-NCPPC, and the plan must be approved prior to issuance of the sedimentation and erosion control permit by Department of Permitting Services.
  5. The Petitioner must install LED signal heads at the intersection of East-West Highway (MD 410) and Connecticut Avenue (MD 185), prior to release of building permit, subject to review and approval by State Highway Administration.
  6. The maximum allowable number of employees is 265, including full and part-time staff.
  7. Total active membership in the Columbia Country Club is limited to 1000 members (875 golf members and 125 non-golf members).
  8. Club hours of operation are 24 hours a day, but are limited as described in the statement of operations submitted with the application.
  9. Petitioner shall carry out the agreement it has reached with its confronting neighbor, Duncan and Donna Kirk, to provide landscaping to help screen the Kirks' view of the subject site, as set forth in Exhibit 32.
  10. All terms and conditions of the approved special exception remain in full force and effect, except as modified in the Board's order granting this modification request.

11. External lighting at the club should conform to the final lighting plan, Exhibit 46(q), Plan Sheet SPE-3.
12. Petitioner will submit a copy of the parking facilities plan for the new garage to the Board of Appeals when it is submitted to DPS as part of the building permit application.
13. The waiver of the accessory structure-rear yard location requirement specified in Zoning Ordinance §59-C-1.326(a) shall apply to the tennis court enclosure, the tennis bubble and the tennis shop, to the extent these facilities are deemed accessory structures, as discussed in Part II. C. 4 of this report.
14. The reduction of the 100 foot outdoor-activity setback requirement specified in Zoning Ordinance §59-G-2.24(d) shall apply only to the two southernmost paddle tennis courts. The fourth (southernmost) paddle tennis court may be as close as 23 feet from the property line, as shown on the Special Exception Site Layout diagram (Exhibit 46(d), Plan Sheet SX-3A), and the existing court immediately to its north may remain approximately 80 feet from the property line. The existing warming hut will be removed, and is no longer reflected in the plans.
15. The three existing paddle tennis courts may not be used after 11:00 p.m., and the proposed fourth (southernmost) paddle tennis court may not be used after 9:00 p.m., to avoid adverse effects on nearby residential properties.

Dated: January 22, 2007

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner